TRANSCRIPT OF RECORD.

163-678

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 233.

MARY M. BLACK, ADMINISTRATRIX OF EDGAR N. BLACK, DECEASED, PLAINTIFF IN ERROR,

vs.

MARY K. L. BLACK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED MAY 2, 1893.

(15,314.)

THE LAW ASSOCIATION OF PHILADELPHIA.

Transcripts
V.
Records
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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Mary K. L. Black, plaintiff, and Mary M. Black, administratrix of Edgar N. Black, deceased, defendant, a manifest error hath happened, to the great damage of the said defendant, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

b UNITED STATES OF AMERICA, *ss:*

To Mary K. L. Black, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, wherein Mary M. Black, administratrix of Edgar N. Black, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of

the Supreme Court of the United States, this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

On this 28th day of April, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared John Atkins before me, the subscriber, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, and makes oath that he delivered a true copy of the within citation to R. C. McMurtrie, Esq., attorney of record for Mary K. L. Black, & service of the said notice & citation was accepted by R. C. McMurtrie, Esq., for Mary K. L. Black.

JOHN ATKINS.

Sworn to and subscribed the 28th day of April, A. D. 1893.

[Seal of Geo. W. Reed, Notary Public, Philadelphia.]

GEO. W. REED,
Notary Public.

I accept service of this notice & citation.

R. C. McMURTRIE,
For Mary K. L. Black.

1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, of October Session, 1891.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } No. 191.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Among the records and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, the following may be found as matter of file and of record at No. 191, October session, 1891:

2 *Docket Entries, October Session,* 1891.

R. C. McMurtrie.	MARY K. L. BLACK, a Citizen of the State of New York, *vs.*	No. 191.
Francis Tracy Tobin, F. Carroll Brewster.	MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	

Sci. fa. surmortgage, dated August 19, 1887, and recorded in the recorder's office of Delaware Co., in M'tg'e Book T No. 5, p. 133;

also in recorder's office at Phila., in M'tg'e Book G. G. P. No. 256, p. 11.

1892, January		2. Præcipe for *scire facias* surmortgage filed. *Sci. fa.* exit, returnable first Monday of January next.
"	"	5. *Sci. fa.* returned *nihil habet.*
"	"	27. Præcipe for *alias scire facias* filed. *Sci. fa.* exit, returnable first Monday of February next.
"	February	1. *Sci. fa.* returned, made known.
"	"	4. Francis Tracy Tobin, Esq., appears for defendant.
"	"	15. Rule on defendant to plead in fifteen days or judgment *sec. reg.*
"	"	" Affidavit of defense filed.
"	"	18. Motion to quash and proceedings to stay in the meantime filed.
"	"	19. Letter of Francis Tracy Tobin, Esq., to R. C. McMurtrie of application for rule, &c., filed.
"	"	" Motion to quash filed.
"	"	" Rule upon plaintiff to show cause why the writ of *scire facias* should not be quashed, returnable March 1, 1892.
"	"	27. Letter of Francis Tracy Tobin, Esq., to Thomas Green, recorder of deeds for the city and county of Philadelphia, filed.
"	"	" Letter of Francis Tracy Tobin, Esq., to John H. Kerlin, Esq., recorder of deeds for Delaware county, Pennsylvania, filed.
"	"	29. Letter of Thomas Green, Esq., recorder of deeds for the city and county of Philadelphia, Pennsylvania, to Francis Tracy Tobin, Esq., filed.
"	"	" Letter of H. S. Walter, Esq., deputy recorder of deeds for Delaware county, Pennsylvania, to Francis Tracey Tobin, Esq., filed.
"	"	29. Certificate under seal of H. S. Walter, Esq., deputy recorder of deeds for Delaware county, Pennsylvania, of mortgages given by Edgar N. Black, as recorded in Delaware county, Pennsylvania, filed.
"	"	" Affidavit of Mary M. Black asking for time to prepare for argument for motion and rule—is not for delay, but is necessary—filed.

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1892, February		29. Affidavit of Francis Tracy Tobin, Esq., attorney, for necessary time to prepare for argument of *of* motion and rule, filed. Affidavit of *E.* Tracy Tobin relative to making copies of record and papers in above case filed.

1892, March		1. Additional reasons for motion to quash writ of *scire facias* filed.
"	"	1. Argued on motion surrule to quash *scire facias* surmortgage.
"	"	" Rule discharged.
"	"	2 Pleas filed under order of court.
"	April	11. Assignment of errors as to question of jurisdiction filed by the defendant by leave of court as of March 4th, A. D. 1892.
"	"	12. And now the jury, being called, come as follows, to wit: (See minutes.)
"	"	12. And now, to wit, the jurors aforesaid upon their oaths or affirmations aforesaid respectively do say that they find for the plaintiff and assess the damages at thirty-one thousand three hundred and forty-one $\frac{80}{100}$ dollars ($31,341.80).
"	"	16. Motion and reasons for a new trial filed.
"	"	25. Argued on motion for a new trial.
"	"	26. Motion for a new trial denied and judgment ordered to be entered on the verdict in favor of plaintiff and against the defendant.
"	"	" Judgment accordingly.
"	"	28. Order of court fixing amount of security surwrit of error to Supreme Court United States. (See order on file and in minutes.)
"	"	29. Bill of exceptions sealed and filed.
"	October	3. Præcipe for *levari facias* filed.
		Levari facias exit, returnable first Monday of November next, No. 1, October session, 1892, execution docket.
"	November	3. Motion for rule to postpone sale filed.
"	"	" Order granting rule proceedings to stay, returnable November 15, 1892, at 10 o'clock a. m. (See order in minutes.)
"	"	" Order of court revoking so much of order of court of November 3, 1892, as directs a stay of proceedings, &c. (See order on file and in minutes.)
1893, January		9. Præcipe for *alias levari facias* filed.
		Levari facias exit to No. 1, October session, 1892, returnable first Monday of February next.
"	"	9. F. Carroll Brewster, Esq., appears for defendant.
"	"	24. Affidavit of Mary M. Black for writ of error filed.
"	"	" Præcipe for writ of error filed.
"	"	25. Petition of Mary M. Black for allowance of appeal to the Supreme Court of the United States filed.

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1893, January	30.	Certificate of judge of circuit court as to question of jurisdiction filed.
" February	1.	Letter of Francis Tracy Tobin, Esq., to R. C. McMurtrie, Esq., January 31, A. D. 1893, filed.
" "	"	Act of March 3rd, A. D. 1891, filed.
" "	"	Exception to surety surwrit of error filed.
" "	2.	Affidavit of Daniel W. Slack, secretary of the Solicitors' Loan and Trust Company, surmotion for approval of surety filed.
" "	"	Opinion of Dallas, cir. J., surapplication for approval of surety upon writ of error, wherein the approval of the surety is denied, filed.
" "	2.	Argued surmotion (at bar) for an order to stay the sale under *alias levari facias.*
" "	"	Motion denied.
" March	10.	Præcipe for *pluries levari facias* filed.
" "	"	*Pluries lev. fac.* exit to No. 1, Oct. sess., 1892.
" March	30.	Motion to quash writ, set aside levy, and stay sale filed.
" "	"	Affidavit of Chester E. Albright and James W. Phillips in support of motion to quash filed.
" "	"	Argued on motion to quash, &c.
" "	"	Motion denied.
" April	1.	Petition of Mary M. Black asking that the property in Delaware county, Penna., will be sold at the court-house in Media, Delaware Co., Pa., filed.

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1893, April	1.	Argued on petition.
" "	"	Motion denied.
" "	3.	Petition of Mary M. Black to stay sale until the matter of appeal is determined filed.
" "	4.	Notice to U. S. marshal and the public relative to sale filed.
" "	8.	United States marshal's bill for November 3rd, A. D. 1892, filed.
" "	"	United States marshal's bill for February 6th, A. D. 1893, filed.
" "	"	United States marshal's bill for April 3rd, A. D. 1893, filed.
" "	11.	Affidavit of Francis Tracey Tobin, Esq., of proof of service of notice on U. S. marshal and the public at the time of sale, April 3rd, A. D. 1893, filed.
" "	"	Motion and reasons for rule to set sale aside filed.
" "	13.	Affidavits in support of motion and reasons for rule to set aside sale filed.

1893, April	13. Affidavit of deputy U. S. marshal as to advertisement of sale filed.
" "	" Argued on motion for rule to set sale aside.
" "	" Motion denied.
" "	15. Objection to acknowledgement of deed or deeds of U. S. marshal and reasons for same filed.
" "	22. Motion for rule to show cause why the bond of Solicitors' Loan and Trust Co. should not be returned to said company for cancellation filed.

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1893, April	27. Bond surwrit of error, approved by Hon. George Shiras, Jr., associate justice Supreme Court U. S., filed.
" "	" Writ of error allowed by Hon. George Shiras, Jr., associate justice Supreme Court U. S., April 26, 1893.
" "	" The sum of five thousand three hundred and seven $\frac{36}{100}$ dollars deposited in the registry of the court by the marshal.
" "	" Copy of writ of error lodged in clerk's office for adverse party.
" "	28. Citation returned, with proof of service and acceptance of service.

7 In the C. C. U. S., E. D. Pa.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Issue *scire facias* surmortgage between Edgar N. Black and Mary K. L. Black, bearing date August 19, 1887, and recorded in the recorder's office of Delaware county, in Mortgage Book T No. 5, page 133; also in the recorder's office at Philada. in Mortgage Book G. G. P. No. 256, page 11, &c., returnable to the first Monday in January, 1892.

R. C. McMURTRIE, *For Plff.*

Endorsed: 191. Oct., 1891, C. C. U. S., E. D. Pa. Black *v.* Black. Præcipe. Filed Jan. 2. 1892. Samuel Bell, clerk. McMurtrie.

8 *Sci. Fa. Surmortgage.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania.

United States marshal for the eastern district of Pennsylvania, Greeting:

Whereas in and by a certain indenture of mortgage, made the 19th day of August, in the year of our Lord one thousand eight

hundred and eighty-seven, between Edgar N. Black, of Delaware county, Pennsylvania (hereinafter called the mortgagor), of the one part, and Mary K. L. Black, of the city of New York, in the State of New York (hereinafter called the mortgagee), of the other part, recorded in the office for recording deeds in and for Delaware county, Pennsylvania, in Mortgage Book "T" No. 5, page 133, on the 20th day of August, 1887, and also recorded at Philadelphia, in Mortgage Book "G. G. P." No. 256, page 11, on the 24th day of August, 1887, reciting in substance and effect that whereas Charles N. Black had agreed to pay to divers persons divers sums of money, all of which were borrowed for the said Edgar N. Black and were received by him and were secured to be paid as follows, viz., by a mortgage of Edgar N. Black and C. N. Black to R. C. McMurtrie, trustee of the estate of C. M. Bohlen, bearing date May 30th, 1877, recorded in Delaware county, in Mortgage Book W No. 3, page 445, for ten thousand dollars, on which there was due and unpaid on the first day of June, 1886, three thousand three hundred and thirty-seven dollars and sixty-six cents for interest; by a mortgage to R. C. McMurtrie *et al.*, trustees under the will of John Bohlen, bear-
9 ing date October 30, 1876, recorded in Delaware county, in Mortgage Book S No. 3, page 139, for ten thousand dollars, on which there was due for interest on the thirtieth day of October, 1886, three thousand five hundred and sixty dollars and four cents; a note of E. N. Black, bearing date the fifth day of July, 1886, payable in six months, endorsed by C. N. Black, with waiver of protest and notice of dishonor for four thousand six hundred and seventy dollars and one cent; also a note of E. N. Black for six thousand dollars, dated the third day of December, 1878; a note of E. N. Black for one thousand dollars, dated the twelfth day of December, 1878; a memorandum of loan for five hundred dollars, dated the second day of January, 1879; a note of E. N. Black for six hundred and sixty-nine dollars, bearing date the twenty-second day of March, 1879, all of which, at the request of E. N. Black, were secured by a pledge of bank stock belonging to Charles N. Black and on which there is now due for principal eight thousand and one hundred and sixty-nine dollars, and for interest to the first day of July, 1886, two thousand one hundred and sixty-four dollars and six cents, together with interest from the first day of July, 1886;

And whereas the said Edgar N. Black is desirous of securing to the persons entitled under the will of the said Charles N. Black the amounts due or which will become due to them if they should be called upon to pay the same;

And whereas the said Mary K. L. Black, the party of the second part, is an executrix of the will of Charles N. Black;

And the said mortgagor, in consideration of the premises and of one dollar paid, granted, bargained, sold, released, and confirmed unto the said Mary K. L. Black, her heirs and assigns, all the lands, tenements, and hereditaments of him, the said Edgar N. Black, situate in the counties of Philadelphia and Delaware, in the State of Pennsylvania, together with the appurtenances; to have and to hold the same unto the mortgagee aforesaid, her heirs and assigns, to and

for the only proper use and behoof of the said mortgagee, her heirs and assigns, forever; which lands and tenements are more particularly described as follows, viz:

1st. All that certain lot or piece of meadow ground situate on State or Province island, in the 24th ward of the city of Philadelphia (formerly the township of Kingsessing), bounded and described, according to a survey made thereof by Edward Lynch, surveyor, June 13th, 1802, as follows, to wit: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill river, thence by the middle of a ditch dividing this from land released to Elizabeth Taylor south thirty-nine degrees 30 minutes east $50\frac{1}{10}$ perches to the middle of the bank dividing this from the marsh and cripple on Delaware river, thence extending along the middle of the said bank the several courses thereof $49\frac{1}{10}$ perches or thereabout to a stake by the side of Eagle creek; thence along the same the several courses thereof $73\frac{7}{10}$ perches to a stake in the middle of the aforesaid road or lane; thence along the middle thereof north 47 degrees 45 minutes east $28\frac{1}{10}$ perches to the place of beginning, containing 15 acres and 5 perches, exclusively of the creek, and also the cripple and marsh land which lieth between the said described embanked lot and low-water mark on Delaware river and Eagle creek.

2nd. Also all that lot or piece of ground (being the northeasternmost part of four contiguous lots or pieces of ground marked on a plan of said State or Province island No. 16, 17, 18, & 19) bounded and described, according to the aforementioned survey, as follows, viz: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill, thence extending along the middle of a ditch by lot No. 15, now or late belonging to Edward Sprogell, south 42 degrees east $46\frac{9}{10}$ perches to a stake in the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of said bank south $38\frac{3}{4}$ degrees west 28 perches to a stake and south $50\frac{1}{2}$ degrees west $18\frac{3}{10}$ perches to a stake; thence along the middle of another ditch dividing this from the remainder of the aforesaid contiguous lots released to the said Edward Sprogell north 39 degrees 30 minutes west $50\frac{1}{10}$ perches to a stake in the middle of the said road; thence extending by the same north $47\frac{1}{4}$ degrees east $43\frac{7}{10}$ perches to the place of beginning, containing 13 acres and 140 perches, together with the cripple and marsh land which lieth between the said last-described embanked land and low-water mark on Delaware river.

3rd. Also all that lot and piece of ground or meadow situate in the 24th ward aforesaid (formerly the township of Kingsessing), being part of State of Province island aforesaid, and the lot marked in the general plan thereof No. 15, beginning at a stake near a large old stump standing on the edge of the cripple and a small distance south of the Hospital wharf, thence by the said cripple south 40 degrees west $21\frac{6}{10}$ perches to a stake set in the bank in the line of lot No. 16, sold to Charles Miller; thence by said lot north 40 degrees 30 minutes west 46 perches to a stake set in the middle of the

road leading southwestwardly from the Hospital road through the marsh; thence by the said road north 47 degrees 45 minutes east 32 perches to a stake set for a corner in the middle of the Hospital road; thence by the said road and the line of the Hospital lot south 28 degrees thirty minutes east 45 perches to the first-mentioned stake and place of beginning, containing by a resurvey 7 acres $\frac{1}{4}$ and 21 perches, exclusive of the flat or guard along the river; and also all the cripple and marsh land which lieth between the above-described embanked lot and low-water mark on Delaware river.

4th. Also all that lot or piece of ground situate on the said State or Province island, in the 24th ward aforesaid, marked on the aforesaid plot of said island No. 23, bounded and being as follows, viz: mortgage beginning at a stake in the middle of the road leading from the (late) pest-house to the ferry — Schuylkill, thence extending by lot 22 south 47 degrees 45 minutes west 59 perches and $\frac{7}{10}$ to a post; thence by lot No. 21 north 42 degrees 15 minutes west 20 perches to a post; thence by lot No. 24 north 47 degrees 45 minutes 11 east $64\frac{4}{10}$ perches to a stake in the middle of the aforesaid road; thence along the middle thereof south 28 degrees 30 minutes east $20\frac{5}{10}$ perches to the place of beginning, containing 7 acres and 120 perches of land, be the same more or less.

5th. Also a strip of land, $\frac{3}{10}$ of a perch in width, extending along the boundary line of the tracts or parcels of land above described, Nos. 1 & 2, which is now included in and forms part of the tracts or parcels as No. 1.

6th. Also all the cripple marsh meadow land and alluvion lying adjacent to the aforedescribed parcels between the present bank and the low-water mark of the inner channel of the River Delaware, in front thereof, extending from a line opposite to the bank across the ditch or drain called Eagle creek along said low-water mark of the said channel of the River Delaware to the boundary line of the property now owned by the United States, at present in the tenancy and occupation of the said Edgar N. Black, as their lessees (being the same premises which William Jacob Wonderly and Phœbe Suplee, his wife, by a certain indenture, dated February 19th, 1859, recorded, Philadelphia, in Deed Book A. D. B. No. 51, page 459, granted and conveyed unto the said Edgar N. Black in fee).

And also all that certain lot or piece of ground situate in the 24th ward aforesaid (formerly the township of Kingsessing) bounded and described as follows: Beginning at a stake on the top of the bank in direct continuation of the line of the middle of Eagle creek, thence up the middle of said creek by other land of Black north 47 degrees nineteen minutes west twelve perches and eleven hundredths and north sixty-three degrees west 5 perches and two hundredths to a stake opposite the middle of a new ditch, made for the dividing line between this and other ground, formerly of Pearson Serrill; thence along the middle of said ditch south forty-eight degrees west 44 perches and 5 hundredths to the middle of a ditch dividing this from land of Matthias Powers; thence along the line of said Powers' land the 6 following courses and distances, viz., along the middle of said ditch south thirty-four degrees five minutes east

17 perches to a stake in the top of the old bank; thence along the top of the bank south 52 degrees thirty-seven minutes west 14 perches and $\frac{85}{100}$ to a stake and south fifty-five degrees 7 minutes west 5 perches and $\frac{4}{10}$ to a stake near a buttonwood, thence across the meadow south 34 degrees 59 minutes east 55 perches and $\frac{8}{10}$ to a stake in the bank, thence along the bank north 32 degrees 31 minutes east 3 perches, thence across the flats south 57 degrees and 29 minutes east 15 perches $\frac{4}{10}$ to the line of low-water mark in the back channel in the Delaware river, thence along the said low-water mark or line north 28 degrees 4 minutes east 65 perches and $\frac{56}{100}$ and north 38 degrees 54 minutes east 16 perches and $\frac{6}{10}$ to a stake, thence across the flats by other land of said Black north 53 degrees twenty-nine minutes west 43 perches and $\frac{8}{10}$ to the stake in the bank and place of beginning, containing in the said boundaries thirty-one acres ninety-four perches and $\frac{945}{1000}$, more or less, together with all the land, being about one hundred perches additional, lying directly in front of the said described tract between low-water line and the middle of the said back channel of Delaware river (being

12 the same premises which Isaac S. Serrill and others, by indenture bearing date the twenty-fifth day of December, anno Domini eighteen and sixty-two, duly executed and acknowledged and intended to be forthwith recorded, according to law, granted and conveyed unto the said Edgar N. Black in fee).

On the above-described property there is a mortgage debt of $10,000, amounting, together with interest to November 10th, 1891, to $15,341.19. The mortgage bears date December 22, 1862, and is recorded at Philadelphia, in Mortgage Book A. C. H. No. 41, p. 508, under and subject to which the *scire facias* is issued.

All those eight contiguous tracts or parcels of land situate, lying, and being on Hog island, in the River Delaware, in the county of Delaware, in the State of Pennsylvania, and which are marked upon a plan of survey made by Elijah Porch, dated October 10, 1816, as Nos. 1, 2, 3, 6, 7, 8, 9, 10, and together bound- and described as follows:

Beginning at a post in the cross-bank dividing the said lands from lands now of John Black and formerly of Samuel Whiteall and corner of lots marked on said plan Nos. 3 & 4, thence by a line dividing the said lots Nos. 3 & 4 and 3 & 5 and 8 & 11 north seventy-nine degrees east one chain and seventy-five links, thence by the line of lot No. 5 five chains and fifty links to a point; thence north sixty degrees east 4 chains and seventy links to the line or ditch dividing lots marked on said plan Nos. 3 & 8; thence south seventy-eight degrees west 5 chains and ninety links to the bank of the back channel; thence to the middle of the back channel, which divides the island from the mainland; thence in a southerly direction along the centre of the said back channel to the low-water mark in the River Delaware, and thence eastwardly by the line of the low-water mark along and around the shore of the said island to a point opposite to a post by the side of the bank on the southerly side of the island and corner of lots marked on said plan Nos. 1 & 2; also a corner of lands of John Black, late of Samuel Whitall aforesaid;

thence along the line of the said cross-bank, the boundary or division line of the lands hereby granted and those of John Black, north fifteen minutes west to the place of beginning, and containing within the banks, by estimation and according to said survey, 93 acres, be the same more or less, bounded on the north by the lots marked on said plan Nos. 4, 5, and 11, on the west and south by the low-water mark of the River Delaware, and east by lands formerly of Samuel Whitall, now the property of John Black, being the same premises which Isaac Reeves and Samuel M. Reeves and Hannah W., his wife, by indenture dated April 11, 1857, and recorded in the office for recording deeds, &c., in and for Delaware county, in Deed Book D No. 2, page 638, granted and conveyed unto the said Engar N. Black in fee.

On this property there is a mortgage debt of $5,000, amounting, together with interest to November 10th, 1891, to $7,670.59. The mortgage bears date October 1, 1867, and is recorded in Delaware county, in Mortgage Book X, p. 469; also a mortgage debt of
$18,300, amounting, together with interest to August 14,
13 1891, to $27,733.94, and is recorded at Philadelphia, in Mortgage Book F. F. W. No. 127, p. 358, and in Delaware county, in Mortgage Book Z No. 2, page 281, under and subject to which the *scire facias* is issued.

All the certain tract or piece of meadow situate in Tinicum, Delaware county, beginning at a stone in Martin's lane, thence along the said lane north 22 degrees west $23\frac{15}{100}$ perches to a stake, a corneer of landing belonging to the estate of William Bingham, deceased; thence by the same (partly along a ditch) north 64½ degrees east $174\frac{42}{100}$ perches to the middle of Bow creek, passing over a stone which is 43½ feet from the middle of said creek; thence along the middle of said creek by other land of Edgar N. Black (said creek being the dividing line of Philadelphia and Delaware counties) the several courses thereof $21\frac{17}{100}$ perches; thence by the same land along the middle of a ditch south 62 degrees west $189\frac{3}{100}$ perches to the place of beginning, containing 22 acres 2 perches, more or less, being the same tract of land which Joseph Carson, executor of the last will of Catherine Carson and Susanna Carson, deceased, and others, by deed dated December 22, 1875, and recorded in the office for recording deeds, &c., in and for said Delaware county, in Deed Book W No. 3, page 651, granted and conveyed unto the same Edgar N. Black in fee.

On this property there is a mortgage debt of $11,000, amounting, together with interest to July 1st, 1891, to $16,607.96. The mortgage bears date January 1, 1876, and is recorded in Delaware county, in Mortgage Book K No. 3, p. 22, under and subject to which the *scire facias* is issued.

All that certain tract or piece of meadow land and flats situate in the township of Tinicum, Delaware county, beginning at a point in the middle of Tinicum road at corner lands of Hannah S. Harper, thence along the middle of said road north 63 degrees east $47\frac{93}{100}$ perches to a point in the middle line of Kinsey's lane; thence along the middle of said *lands of* south 25 degrees east to low-water mark

of the Delaware river; thence westward along low-water mark of the Delaware river about 65 perches to said land of Hannah S. Harper; thence north 18 degrees 25 minutes west along the said Hannah S. Harper's ground to the place of beginning, containing inside the river bank 44 acres and 48 square perches of land, and the flats outside the river bank to low-water mark containing about 12 acres; and also all that certain tract of meadow ground situate in the township of Tinicum aforesaid at corner of lands above described and of estate of Samuel Crothers, deceased, thence along Crothers' ground north sixty-five degrees forty-nine minutes east fifty-eight and forty-nine one-hundredths perches to a point, the line of land of J. C. Andrews; thence along said Andrews' ground south 24 degrees 3 minutes east 51 and $\frac{78}{100}$ perches to the bank of the Delaware river; thence along said bank south seventy-two degrees 51 minutes west 48 and $\frac{42}{100}$ perches to a point; thence still along said bank north thirty-nine degrees thirty-eight minutes west thirteen and twelve one-hundredths perches to a point; thence
14 still along said bank north eighty-seven degrees west seven and eighty-six one-hundredths perches to the middle of said Kinsey's lane; thence along the middle of said lane north 23 degrees 50 minutes west 29 and $\frac{62}{100}$ perches to the place of beginning, containing sixteen acres one hundred and forty-four fifty-three *one* one-hundredths perches; and also all the "flats" lying in front of the last-described tract of land between the line of said land of said Andrews and the tract first above described and extending to low-water mark of the River Delaware (being the same premises which the said James P. Serrill and Ellen M., his wife; Susan, George, and Jacob S. Serrill, by indenture of even date herewith, August 1st, 1876, but executed immediately before the execution of these presents and intended to be forthwith recorded, for the consideration therein mentioned, part whereof is intended to be hereby secured, granted and conveyed unto the said Edgar N. Black).

On this property there is a mortgage debt of $6,180.49, amounting, together with interest to August 1st, 1891, to $8,275.12. The mortgage bears date August 1st, 1876, and is recorded in Delaware county, in Mortgage Book R No. 3, p. 581, under and subject to which the *scire facias* is issued.

Also all that certain tract of land, being part of Hog island, situate in Tinicum township, Delaware county, State of Pennsylvania, beginning at a point at low-water mark of the River Delaware opposite the middle of the lane dividing the premises hereinafter described from that part of the island formerly belonging to Samuel and Isaac Reeves and now owned by Edgar N. Black, thence along the said low-water mark of the River Delaware to a stone, a point of land belonging to the United States Government, on which Fort Mifflin stands; thence along said land north 8 degrees 25 minutes east 1,551 feet and $\frac{35}{100}$ of a foot, more or less, to the middle of the back channel; thence along the middle of the said back channel the several courses thereof to the centre of a road (crossing said channel) leading from the mainland to Hog island; thence still along the middle of the said back channel the several courses

thereof to the middle of a sluice race; thence along the said sluice race to the middle of the lane first above mentioned; thence along the middle of the said lane to the place of beginning, containing 350 acres (being the same premises which by the will of John Black, deceased, were devised to the said Edgar N. Black for the term of 5 years, with the remainder as to $\frac{1}{3}$ to the said Edgar N. Black in fee and as to one-third to the said Charles N. Black in fee).

This property is subject to the aforesaid mortgage debt and interest, amounting to $16,607.96; also to a mortgage debt of $10,000, amounting, together with interest to October 30th, 1891, to $15,966.39. The mortgage bears date October 30th, 1876, and is recorded in Delaware county, in Mortgage Book S No. 3, p. 129, under and subject to which the *scire facias* is issued.

15 Also all that tract of meadow land in the township of Tinicum, Delaware county, in the State of Pennsylvania, beginning at a stake in the middle of the river bank, thence alongside of a 33-feet road north 25¼ — west 46 perches to a corner of land of Joseph Ash, late of Thomas Serrill; thence along the middle of a ditch, being a line of the same, south sixty-five degrees west $56\frac{2}{10}$ perches to a corner of land late of George Serrill, deceased; thence along the middle of a ditch, being a line of the said George Serrill's, south 25¾ degrees east 51 and $\frac{8}{10}$ perches to the Delaware river; thence along the river bank north seventy-one and ½ degrees east $51\frac{5}{10}$ perches; thence north 20¼ degrees west $12\frac{1}{10}$ perches, and thence north seventy-one & ½ degrees east three and $\frac{65}{100}$ perches to the place of beginning, containing 18 acres three roods and twenty-eight square perches, more or less, and also all the flats lying in front of the said low-water mark in the Delaware river (being the same premises which Edward A. Price, by indenture bearing date the 15th day of April, A. D. 1871, and recorded in the office of the recorder of deeds, etc., in and for the county of Delaware, in Deed Book No. 3, page 591, granted and conveyed unto Joseph Charles Andrews in fee, and the said Joseph Charles Andrews and others, by deed dated December 1st, 1876, and recorded, as aforesaid, in Deed Book No. 4, page 661, granted and conveyed unto William D. H. Serrill and others in trust for the benefit of creditors, who, by deed dated March 28th, 1877, recorded, as aforesaid, in Deed Book No. 4, page 168, granted and conveyed unto Edgar N. Black in fee).

On this property there is a mortgage debt of $10,000, amounting, together with interest to November 30th, 1891, to $16,007.89, which is hereinafter recited, under and subject to which the *scire facias* is issued.

Also all that certain tract or piece of land situate, lying, and being in the 24th ward of the city of Philadelphia (formerly Kingsessing, in the county of Philadelphia) bounded and described as follows: Beginning at a point in the middle of the old bed of the back channel of the River Delaware, now banked off and stopped, a corner of other land of Edgar N. Black, formerly of Pearson Serrill, thence extending north 57 degrees 29 minutes west $15\frac{4}{10}$ perches to a point; thence north 34 degrees 59 minutes west $55\frac{8}{10}$ perches to a point; thence south 32 degrees 31 minutes west 3 perches to a point; thence

north 55 degrees 7 minutes east $5\frac{4}{10}$ perches; thence north 52 degrees 37 minutes east $14\frac{85}{100}$ perches to a point; thence north 34 degrees 5 minutes west $1\frac{10}{100}$ perches to the middle of the ditch; thence along the middle of said ditch and along the line of other land now or late of Matthias Powers south 55 degrees 3 minutes west $67\frac{7}{10}$ perches to a point in the land now or late of David B. Kershaw; thence along the middle of a ditch to a line of said Kershaw's land south 33 degrees 58 minutes east $58\frac{75}{100}$ perches to the middle of a ditch; thence along the line of said Kershaw's land to
16 the centre of the said back channel, and thence up the middle of said channel the various courses thereof to the place of beginning, containing 26 acres of land, more or less, being the same premises which Matthias Powers and wife, by indenture dated December 31st, 1863, and recorded in Philadelphia, in Deed Book L. R. B. No. 8, page 148, granted and conveyed unto Edgar N. Black in fee.

Also all that certain tract or piece of land situate on Carpenter's island, in that part of the city of Philadelphia, 24th ward, formerly called Kingsessing, bounded and described as follows, to wit: Beginning at a stone, the intersection of the division line between lands of late Henry L. Churchman and Thomas Serrill of the newly embanked meadow as laid down in a certain survey made thereof by John Thompson, dated June 2, 1837, and recorded in Deed Book S. H. F. No. 18, page 583, and the line being the middle of the footing ditch and bearing south 67 degrees 57 minutes west, the said division line bearing south 35 degrees east, thence along the line of the said footing ditch south 67 degrees 57 minutes west $36\frac{66}{100}$ perches to a stone in the middle of said ditch; thence south 25 degrees 4 minutes west to low water in the back channel of the River Delaware; thence along the same to the continuation to the above first-mentioned division line; thence along the same to the place of beginning, containing 8 acres 56 perches, more or less (being the same tract of land which John J. Henry and wife, by indenture dated August 8th, 1866, and recorded in Deed Book L. R. B. 209, 491, granted and conveyed unto Edgar N. Black in fee).

And also all that certain tract or piece of meadow and marsh land situate, lying, and being in Tinicum township, in the county of Delaware, bounded and described, according to survey and plan thereof made by Benjamin H. Smith, surveyor, February 1st, 1872, as follows: Beginning in the middle of the back channel (separating Martain's bar from Hog island) opposite the mouth of Bow creek, thence extending up the middle of the said Bow creek, on the bed thereof, by the several courses thereof along other land of E. N. Black to a stake or stone bearing north 55 degrees 20 minutes east and distance 72 feet from a stone in the next-mentioned line, and thence extending south 55 degrees 20 minutes west by other land formerly of Joseph Carson, now of the estate of William Alexander Bearing Bingham, a minor, 3,108 feet to a stake or stone in the northeastwardly side of Martain's lane; thence extending along the side of the said lane south 29 degrees 58 minutes east $491\frac{7}{10}$ feet to a stake or stone in the meadow or outer bank as es-

tablished in the year 1872; thence extending still further by the said line to the middle of the back channel; thence down the said channel the several courses thereof to the line of low-water mark in the River Delaware on the outer edge of Martain's bar; thence extending up the River Delaware by the said low-water line to a point in the middle of the back channel first mentioned (separating Martain's bar from Hog island); thence extending up the mid-
17 dle of the said back channel to the place of beginning, containing in all 213 acres $27\frac{45}{100}$ perches according to recent surveys thereof made by Benjamin H. Smith, surveyor (being the same premises which by two indentures were granted and conveyed unto Edgar N. Black in fee, one thereof by Alexander Biddle and Charles Hare Hutchinson, guardians of William Alexander Baring Bingham, a minor, dated February 3, 1873, and recorded in the office for recording deeds in and for Delaware county, in Deed Book H No. 3, page 246, &c., the other thereof by George W. Henderson *et al.*, dated April 14th, 1860, and recorded, as aforesaid, in Deed Book G No. 2, page 415).

On the three last-described properties there is the aforesaid mortgage debt of $18,300, amounting, together with interest to August 14, 1891, to $27,733.94, under and subject to which the *scire facias* is issued.

All of the above-described premises, situate in Delaware county, are also subject to a mortgage dated May 30th, 1877, recorded in Delaware county, in Mortgage Book U No. 3, page 445, on which there is due for principal $10,000 and interest to November 30th, 1891, $6,007.89; in all, $16,007.89.

Under and subject to which this *scire facias* is issued.

And in and by the said indenture it was provided also if the said mortgagor, his heirs, executors, or administrators, should pay to the said mortgagee or to any person or persons entitled to the same the sum of nine thousand dollars, being the amount due and owing by him to the said Charles N. Black on the day of the date thereof, together with interest thereon from that day at the rate of 4 per cent. per annum, within one year from the date of the said indenture of mortgage, and should pay to the person or persons entitled to the same all monies which may become due and owing to the representatives of the said Charles N. Black by reason of any payments they might make or which may be made out of the proceeds of his property mortgaged or pledged to secure the same within one year after the same becomes due and payable, with interest at the rate of six per cent. per annum, then this obligation and the estate hereby granted to be void or else to remain in full force and virtue;

And it is therein further granted and agreed that the debt due to the said Charles N. Black by the said mortgagor and the several debts which may become due and payable by him to any persons claiming under the will of Charles N. Black upon payment by them or out of any property they may be entitled to under his will shall be deemed and taken to constitute separate and distinct debts, in respect of which separate and distinct writs of *scire facias* may issue from time to time against separate and distinct parcels of the mort-

gaged premises, and that such writs may issue at any time after default made on the payment of the particular and distinct debt thereby secured in the same manner as if there were separate and distinct mortgages for each of the said distinct debts and obligations upon each of the separate and distinct parcels of land thereby mortgaged;

And whereas the said Mary K. L. Black, being one of the executors of Charles N. Black, afterwards, to wit, on the 19th of
18 August, 1887, paid the said several sums of six thousand dollars, and one thousand dollars, and five hundred dollars, and six hundred and sixty-nine dollars, together with the interest thereon to that date, viz., two thousand six*ty* hundred and seventy-nine dollars and nineteen cents, and together amounting to the sum of ten thousand eight hundred and forty-eight dollars and nineteen cents, and on the 16th December, 1880, the said sum of four thousand six hundred and seventy dollars and one cent, together with the interest thereon to that day, viz., eight hundred and forty-seven dollars and sixty cents, together amounting to the sum of five thousand five hundred and seventeen dollars and sixty-one cents;

And whereas the above-mentioned principal sums of ten thousand dollars and the interest thereon, viz., three thousand three hundred and thirty-seven dollars and sixty-six cents, secured by a mortgage bearing date May 30th, 1877, and the sum of ten thousand dollars and the interest thereon, viz., three thousand five hundred and sixty dollars and four cents, secured by the mortgage bearing date October 30th, 1876, still remain unpaid, and also the interest that has since accrued upon the said several sums so paid by the said Mary K. L. Black, executrix, and also the interest on the sums of ten thousand dollars and ten thousand dollars remaining unpaid still remain due and unpaid;

And whereas default has been made in the payment of the said several sums of nine thousand dollars, and of ten thousand eight hundred and ninety-one dollars and twenty-six cents, and of five thousand five hundred and seventeen dollars and sixty-one cents, and of ten thousand dollars, and of ten thousand dollars, and of the sums due on the said sums respectively for interest, as we have been given to understand;

And whereas Edgar N. Black has since deceased and letters of administration of his estate have been duly granted to Mary M. Black;

And the said Mar*k* K. L. Black, mortgagee aforesaid, a citizen of the State of New York, praying that a fit remedy in this behalf may be provided, we command you that by good and lawful men of your district you make known to the said Mary M. Black, administratrix aforesaid, a citizen of the State of Pennsylvania, that she be and appear before the judges of the circuit court of the United States for the eastern district of Pennsylvania, there to be held, on the first Monday of January, 1892, to show, if anything she knows or has to say why the said mortgaged premises, with the appurtenances, ought not to be taken in execution and sold to satisfy the debt and interest aforesaid if to her it shall seem expedient; and

have *yet* then and there the names of those by whom you shall so make it known to her, and this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this second day of January, in the year of our Lord one thousand eight hundred and ninety-two, and in the 116th year of the Independence of the United States.

[SEAL.] SAMUEL BELL, *Clerk.*

19 Endorsed: No. 191. October, 1891. C. C. U. S., E. D. Pa. Mary K. L. Black *vs.* Mary M. Black, adm'x Edgar N. Black. *Sci. fa.* surm't'g. McMurtrie. Filed Jan. 5, 1892. Samuel Bell, clerk. Marshal's return: *Nihil habet.* So answers Wm. R. Leeds, U. S. marshal, per James L. Marshall, dep.

20 In the C. C. U. S., E. D. of Penna.

MARY K. L. BLACK, a citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} October, 1891. No. 191.

Issue *alias sci. fa.* surm't'ge between plaintiff and Edgar N. Black, dated the 19th day of August, 1887, & rec. in Delaware county, in Mortg. Book T No. 5, p. 133, &c.; also in Philada., in Mortg. Book G. G. P. No. 256, p. 11, returnable to the first Monday in February, 1892.

R. C. McMURTRIE, *For Pl'ff.*

Jan'y 26, '92.

Endorsed: 191. Oct., 1891. C. C. U. S., E. D. of Pa. Black *v.* Black. Præcipe for *als. sci. fa.* surm't'g. Filed Jan. 27, 1892. Samuel Bell, clerk. McMurtrie.

21 *Als. Sci. Fa. Surmortgage.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania.

United States marshal for the eastern district of Pennsylvania, Greeting:

Whereas in and by a certain indenture of mortgage, made the 19th day of August, in the year of our Lord one thousand eight hundred and eighty-seven, between Edgar N. Black, of Delaware county, Pennsylvania (hereinafter called the mortgagor), of the one part, and Mary K. L. Black, of the city of New York, in the State of New York (hereinafter called the mortgagee), of the other part, recorded in the office for recording deeds in and for Delaware county, Pennsylvania, in Mortgage Book "T" No. 5, page 133, on

the 20th day of August, 1887, and also recorded at Philadelphia, in Mortgage Book "G. G. P." No. 256, page 11, on the 24th day of August, 1887, reciting in substance and effect that whereas Charles N. Black had agreed to pay to divers persons diverse sums of money, all of which were borrowed for the said Edgar N. Black and were received by him and were secured to be paid as follows, viz., by a mortgage of Edgar N. Black and C. N. Black to R. C. McMurtrie, trustee of the estate of C. M. Bohlen, bearing date May 30th, 1877, recorded in Delaware county, in Mortgage Book W No. 3, page 445, for ten thousand dollars, on which there was due and unpaid on the first day of June, 1886, three thousand and three hundred and thirty-seven dollars and sixty-six cents for interest; by a mortgage to R. C. McMurtrie *et al.*, trustees under the will of John Bohlen, bearing date October 30, 1876, recorded in Delaware county, in Mortgage Book "S" No. 3, page 139, for ten thousand dollars, on which there was due for interest on the thirtieth day of October, 1886, three thousand five hundred and sixty dollars and four cents; a note of E. N. Black, bearing date the fifth day of July, 1886, payable in six months, endorsed by C. N. Black, with waiver of protest and notice of dishonor for four thousand six hundred and seventy dollars and one cent; also a note of E. N. Black for six thousand dollars, dated the third day of December, 1878; a note of E. N. Black for one thousand dollars, dated the twelfth day of December, 1878; a memorandum of loan for five hundred dollars, dated the second day of January, 1879; a note of E. N. Black for six hundred and sixty-nine dollars, bearing date the twenty-second day of March, 1879, all of which, at the request of E. N. Black, were secured by a pledge of bank stock belonging to Charles N. Black and on which there is now due for principal eight thousand one hundred and sixty-nine dollars, and for interest to the first day of July, 1886, two thousand one hundred and sixty-four dollars and six cents, together with interest from the first day of July, 1886;

And whereas the said Edgar N. Black is desirous of securing to the persons entitled under the will of the said Charles N. Black the amounts due or which will become due to them if they should be called upon to pay the same;

And whereas the said Mary K. L. Black, the party of the second part, is an executrix of the will of Charles N. Black;

And the said mortgagor, in consideration of the premises and of one dollar paid, granted, bargained, sold, released, and confirmed unto the said Mary K. L. Black, her heirs and assigns, all the lands, tenements, and hereditaments of him, the said Edgar N. Black, situate in the counties of Philadelphia and Delaware, in the State of Pennsylvania, together with the appurtenances; to have and to hold the same unto the mortgagee aforesaid, her heirs and assigns, to and for the only proper use and behoof of the said mortgagee, her heirs and assigns, forever; which lands and tenements are more particularly described as follows, viz:

First. All that certain lot or piece — meadow ground situate on State or Province island, in the 24th ward of the city of Philadelphia

22 (formerly the township of Kingsessing), bounded and described, according to a survey made thereof by Edward Lynch, surveyor, June 13th, 1802, as follows, to wit: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill river, thence by the middle of a ditch dividing this from land released to Elizabeth Taylor south thirty-nine degrees 30 minutes east $50\frac{1}{10}$ perches to the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of the said bank the several courses thereof $49\frac{1}{10}$ perches or thereabouts to a stake by the side of Eagle creek; thence along the same several courses thereof $73\frac{7}{10}$ perches to a stake in the middle of the aforesaid road or lane; thence along the middle thereof north 47 degrees 45 minutes east $28\frac{1}{10}$ perches to the place of beginning, containing 15 acres and 5 perches, exclusively of the creek, and also the cripple and marsh land which lieth between the said described embanked lot and low-water mark on Delaware river and Eagle creek.

Second. Also all that lot or piece of ground (being the northeasternmost part of four contiguous lots or pieces of ground marked on a plan of said State or Province island Nos. 16, 17, 18, & 19) bounded and described, according to the aforementioned survey, as follows, viz: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry — Schuylkill, thence extending along the middle of a ditch by lot No. 15, now or late belonging to Edward Sprogell, south 42 degrees east $46\frac{2}{10}$ perches to a stake in the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of said bank south $38\frac{3}{4}$ degrees west 28 perches to a stake and south $50\frac{1}{2}$ degrees west $18\frac{3}{10}$ perches to a stake; thence along the middle of another ditch dividing this from the remainder of the aforesaid contiguous lots released to the said Edward Sprogell north 39 degrees 30 minutes west $50\frac{1}{10}$ perches to a stake in the middle of said road; thence extending by the same north $47\frac{1}{4}$ degrees east $43\frac{7}{10}$ perches to the place of beginning, containing 13 acres and 140 perches, together with the cripple and marsh land which lieth between the said last-described embanked land and low-water mark on Delaware river.

Third. Also all that lot and piece of ground or meadow situate in the 24th ward aforesaid (formerly the township of Kingsessing), being part of State of Province island aforesaid, and the lot marked in the general plan thereof No. 15, beginning at a stake near a large old stump standing on the edge of the cripple and a small distance south of the Hospital wharf, thence by the said cripple south 40 degrees west $21\frac{5}{10}$ perches to a stake set in the bank in the line of lot No. 16, sold to Charles Miller; thence by said lot north 40 degrees 30 minutes west 46 perches to a stake set in the middle of the road leading southwestwardly from the Hospital road through the marsh; thence by the said road north 47 degrees 45 minutes east 32 perches to a stake set for a corner in the middle of the Hospital road; thence by the said road and the line of the Hospital lot south 28 degrees thirty minutes east 45 perches to the first-mentioned

stake and place of beginning, containing by a resurvey 7 acres $\frac{1}{4}$ and 21 perches, exclusive of the flat or guard along the river; and also all the cripple and marsh land which lieth between the above-described embanked lot and low-water mark on Delaware river.

Fourth. Also all that lot or piece of ground situate on the said State or Province island, in the 24th ward aforesaid, marked on the aforesaid plan of said island No. 23, bounded and being as follows, viz: Beginning at a stake in the middle of the road leading from the (late) pest-house to the ferry on Schuylkill, thence extending by lot 22 south 47 degrees 45 minutes west 59 perches and $\frac{7}{10}$ to a post; thence by lot No. 21 north 42 degrees 15 minutes west 20 perches to a post; thence by lot No. 24 north 47 degrees 45 minutes east $64\frac{4}{10}$ perches to a stake in the middle of the aforesaid road; thence along the middle thereof south 28 degrees 30 minutes east $20\frac{5}{10}$ perches to the place of beginning, containing 7 acres and 120 perches of land, be the same more or less.

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Fifth. Also a strip of land, $\frac{3}{10}$ of a perch in width, extending along the boundary line of the tracts or parcels of land above described, Nos. 1 & 2, which is now included in and forms a part of the tracts or parcels as No. 1.

Sixth. Also all the cripple marsh meadow land and alluvion lying adjacent to the aforedescribed parcels between the present bank and the low-water mark of the inner channel of the River Delaware, in front thereof, extending from a line opposite to the bank across the ditch or drain called Eagle creek along said low-water mark of the said channel of the River Delaware to the boundary line of the property now owned by the United States, at present in the tenancy and occupation of the said Edgar N. Black, as their lessees (being the same premises which William Jacob Wonderly and Phœbe Suplee, his wife, by a certain indenture, dated February 19th, 1859, recorded, Philadelphia, in Deed Book A. D. B. No. 51, page 459, granted and conveyed unto the said Edgar N. Black in fee).

And also all that certain lot or piece of ground situate in the 24th ward aforesaid (formerly the township of Kingsessing) bounded and described as follows: Beginning at a stake on the top of the bank in direct continuation of the line of the middle of Eagle creek, thence up the middle of said creek by other land of Black north 47 degrees nineteen minutes west twelve perches and eleven hundredths and north sixty-three degrees west 5 perches and two hundredths to a stake opposite the middle of a new ditch, made for the dividing line between this and other ground, formerly of Pearson Serrill; thence along the middle of said ditch south forty-eight degrees west 44 perches and 5 hundredths to the middle of a ditch dividing this from land of Matthias Powers; thence along the line of said Powers' land the six following courses and distances, viz., along the middle of said ditch — thirty-four degrees five minutes east 17 perches to a stake in the top of the old bank; thence along the top of the bank south 52 degrees thirty-seven minutes west 14 perches and $\frac{85}{100}$ to a stake and south fifty-five degrees 7 minutes west 5 perches and $\frac{4}{10}$ to a stake near a buttonwood, thence across the meadow south 34 degrees 59 minutes east 55 perches and $\frac{8}{10}$ to a

stake in the bank, thence along the bank north 32 degrees 31 minutes east 3 perches, thence across the flats south 57 degrees and 29 minutes east 15 perches $\frac{4}{10}$ to the line of low-water mark in the back channel in the Delaware river, thence along the said low-water mark or line north 28 degrees 4 minutes east 65 perches and $\frac{56}{100}$ and north 48 degrees 54 minutes east 16 perches and $\frac{6}{10}$ to a stake, thence across the flats by other land of said Black north 53 degrees twenty-nine minutes west 43 perches and $\frac{8}{10}$ to the stake in the bank and place of beginning, containing in the said boundaries thirty-one acres ninety-four perches and $\frac{24}{100}$, more or less, together with all the land, being about one hundred perches additional, lying directly in front of the said described tract between low-water line and the middle of the back channel of Delaware river (being the same premises which Isaac S. Serrill and others, by indenture bearing date the twenty-fifth day of December, anno Domini eighteen and sixty-two, duly executed and acknowledged and intended to be forthwith recorded, according to law, granted and conveyed unto the said Edgar N. Black in fee).

On the above-described property there is a mortgage debt of $10,000, amounting, together with interest to November 10th, 1891, to $15,341.19. The mortgage bears date December 22, 1862, and is recorded at Philadelphia, in Mortgage Book A. C. H. No. 41, p. 508, under and subject to which the *scire facias* is issued.

Also all those eight contiguous tracts or parcels of land situate, lying, and being on Hog island, in the River Delaware, in the county of Delaware, in the State of Pennsylvania, *on* which are marked upon a plan of survey made by Elijah Porch, dated October 10, 1816, as Nos. 1, 2, 3, 6, 7, 8, 9, 10, and together bound- and described as follows:

Beginning at a post in the cross-bank dividing the said lands
24 — now of John Black and formerly of Samuel Whiteall and
corner of lots marked on said plan Nos. 3 & 4, thence by a line dividing the said lots Nos. 3 & 4 and 3 & 5 and 8 & 11 north seventy-nine degrees east one chain and seventy-five links; thence by the line of lot No. 5 five chains and fifty links to a point; thence north sixty degrees east 4 chains and seventy links to the line or ditch dividing lots marked on said plain Nos. 3 & 8; thence south seventy-eight degrees west 5 chains and ninety links to the bank of the back channel; thence to the middle of the back channel, which divides the island from the mainland; thence in a southerly direction along the centre of the said back channel to the low-water mark in the River Delaware, and thence eastwardly by the line of the low-water mark along and around the shore of the said island to a point opposite to a post by the side of the bank on the southerly side of the island and corner of lots marked on said plan Nos. 1 & 2; also a corner of lands of John Black, late of Samuel Whitall aforesaid; thence along the line of the said cross-bank, the boundary or division line of the lands hereby granted and those of John Black, north fifteen minutes west to the place of beginning, and containing within the banks, by estimation and according to said survey, 93 acres, be the same more or less, bounded on the north by the

lots marked on said plan Nos. 4, 5, and 11, on the west and south by the low-water mark of the River Delaware, and east by lands formerly of Samuel Whitall, now the property of John Black, being the same premises which Isaac Reeves and Samuel R. Reeves and Hannah W., his wife, by indenture dated April 11, 1857, and recorded in the office for recording deeds, &c., in and for Delaware county, in Deed Book D No. 2, page 638, granted and conveyed unto the said Edgar N. Black in fee.

On this property there is a mortgage debt of $5,000, amounting, together with interest to November 10th, 1891, to $7,670.59. The mortgage bears date October 1, 1867, and is recorded in Delaware county, in Mortgage Book X, 469; also a mortgage debt of $18,300, amounting, together with interest to August 14, 1891, to $27,733.94, and is recorded at Philadelphia, in Mortgage Book F. T. W. No. 127, p. 358, and in Delaware county, in Mortgage Book Z No. 2, page 281, under and subject to which the *scire facias* is issued.

Also all that certain tract or piece of meadow situate in Tinicum, Delaware county, beginning at a stone in Martain's lane, thence along the said lane north 22 degrees west $23\frac{15}{100}$ perches to a stake, a corner of land belonging to the estate of William Bingham, deceased; thence by the same (partly along a ditch) north 64½ degrees east $174\frac{42}{100}$ perches to the middle of Bow creek, passing over a stone which is 43½ feet from the middle of said creek; thence along the middle of said creek by other land of Edgar N. Black (said creek being the dividing line of Philadelphia and Delaware counties) the several courses thereof $21\frac{17}{100}$ perches; thence by the same land along the middle of a ditch south 52 degrees west $189\frac{3}{100}$ perches to the place of beginning, containing 22 acres 2 perches, more or less (being the same tract of land which Joseph Carson, executor of the last will of Catherine Carson and Susanna Carson, and others, by deed dated December 22, 1875, and recorded in the office for recording deeds, &c., in and for said Delaware county, in Deed Book W No. 3, page 651, granted and conveyed unto the same Edgar N. Black in fee).

On this property there is a mortgage debt of $11,000, amounting, together with interest to July 1st, 1891, to $16,607.96. The mortgage bears date January 1, 1876, and is recorded in Delaware county, in Mortgage Book K No. 3, p. 22, under and subject to which the *scire facias* is issued.

Also all that certain tract or piece of meadow land and flats situate in the township of Tinicum, Delaware county, beginning at a
25 point in the middle of Tinicum road at corner lands of Hannah S. Harper, thence along the middle of said road north 63 degrees east $47\frac{93}{100}$ perches to a point in the middle line of Kinsy's lane; thence along the middle of said *lands* south 25 degrees east to low-water mark of the Delaware river; thence westward along low-water mark of the Delaware river about 65 perches to said land of Hannah S. Harper; thence north 18 degrees 25 minutes west along the said Hannah S. Harper's ground to the place of beginning, containing inside the river bank 44 acres and 48 square perches of land, and the flats outside the river bank to low-water mark containing

12 acres; and also all that certain tract of meadow ground situate in the township of Tinicum aforesaid at corner of lands above described and of estate of Samuel Crothers, deceased, thence along Crothers' ground north sixty-five degrees forty-nine minutes east fifty-eight and forty-nine one-hundredths perches to a point, the line of land of J. C. Andrews; thence along said Andrews' ground south 24 degrees 3 minutes east 51 and $\frac{78}{100}$ perches to the bank of the Delaware river; thence along said bank south seventy-two degrees 51 minutes west 48 and $\frac{42}{100}$ perches to a point; thence still along said bank north thirty-nine degrees thirty-eight minutes west thirteen and twelve one-hundredths perches to a point; thence still along said bank north eighty-seven degrees west seven and eighty-six one-hundredths perches to the middle of said Kinsey's lane; thence along the middle of said lane north 23 degrees 50 minutes west 29 and $\frac{62}{100}$ perches to the place of beginning, containing sixteen acres one hundred and forty-four fifty-three one-hundredths perches; and also all the "flats" lying in front of the last-described tract of land between the line of said land of said Andrews and the tract first above described and extending to low-water mark of the River Delaware (being the same premises which the said James P. Serrill and Ellen M., his wife; Susan, George, and Jacob S. Serrill, by indenture of even date herewith, August 1st, 1876, but executed immediately before the execution of these presents and intended to be forthwith recorded, for the consideration therein mentioned, part whereof is intended to be hereby secured, granted and conveyed unto the said Edgar N. Black).

On this property there is a mortgage debt of $6,180.49, amounting, together with interest to August 1st, 1891, to $8,275.12. The mortgage bears date August 1st, 1876, and is recorded in Delaware county, in Mortgage Book "R" No. 3, page 581, under and subject to which the *scire facias* is issued.

Also all that certain tract of land, being part of Hog island, situate in Tinicum township, Delaware county, State of Pennsylvania, beginning at a point at low-water mark of the River Delaware opposite the middle of the land dividing the premises hereinafter described from that part of the island formerly belonging to Samuel and Isaac Reeves and now owned by Edgar N. Black, thence along the said low-water mark of the River Delaware to a stone, a point of land belonging to the United States Government, on which Fort Mifflin stands; thence along said land north 8 degrees 25 minutes east 1,551 feet and $\frac{35}{100}$ of a foot, more or less, to the middle of the back channel; thence along the middle of the said back channel the several courses thereof to the centre of a road (crossing said channel) leading from the mainland to Hog island; thence still along the middle of the said back channel the several courses thereof to the middle of a sluice race; thence along the said sluice race to the middle of the lane first above mentioned; thence along the middle of the said lane to the place of beginning, containing 350 acres (being the same premises which by the will of John Black, deceased, were devised to the said Edgar N. Black for the term of

5 years, with the remainder as to $\frac{1}{3}$ to the said Edgar N. Black in fee and as to one-third to the said Charles N. Black in fee).

This property is subject to the aforesaid mortgage debt and interest, amounting to $16,607.96; also to a mortgage debt of $10,000, amounting, together with interest to October 30th, 1891, to $15,966.39. The mortgage bears date October 30th, 1876, and is recorded in Delaware county, in Mortgage Book "S" No. 3, page 129, under and subject to which the *scire facias* is issued.

26 Also all that tract of meadow land in the township of Tinicum, Delaware county, in the State of Pennsylvania, beginning at a stake in the middle of the river bank, thence alongside of a 33-feet road north 25¼ degrees west 46 perches to a corner of land of Joseph Ash, late of Thomas Serrill; thence along the middle of a ditch, being a line of the same, south sixty-five degrees west $56\frac{2}{10}$ perches to a corner of land late of George Serrill, deceased; thence along the middle of a ditch, being a line of the said George Serrill's, south 25¾ degrees east 51 and $\frac{5}{10}$ perches to the Delaware river; thence along the river bank north seventy-one and ½ degrees east $51\frac{5}{10}$ perches; thence north 20¼ degrees west $12\frac{1}{10}$ perches, and thence north seventy-one & ½ degrees east three and $\frac{65}{100}$ perches to the place of beginning, containing 18 acres three roods and twenty-eight square perches, more or less, and also all the flats lying in front of the said low-water mark in the Delaware river (being the same premises which Edward A. Price, by indenture bearing date the 15th day of April, A. D. 1871, and recorded in the office of the recorder of deeds, etc., in and for the county of Delaware, in Deed Book "B" No. 3, page 591, granted and conveyed unto Joseph Charles Andrews in fee, and the said Joseph Charles Andrews and others, by deed dated December 1st, 1876, and recorded, as aforesaid, in Deed Book No. 4, page 661, granted and conveyed unto William D. H. Serrill and others in trust for the benefit of creditors, who, by deed dated March 28th, 1877, recorded, as aforesaid, in Deed Book "H" No. 4, page 168, granted and conveyed unto Edgar N. Black in fee).

On this property there is a mortgage debt of $10,000, amounting, together with interest to November 30th, 1891, to $16,007.89, which is hereinafter recited, under and subject to which the *scire facias* is issued.

Also all that certain tract or piece of land situate, lying, and being in the 24th ward of the city of Philadelphia (formerly Kingsessing, in the county of Philadelphia) bounded and described as follows: Beginning at a point in the middle of the old bed of the back channel of the River Delaware, now banked off and stopped, a corner of other land of Edgar N. Black, formerly of Pearson Serrill, thence extending north 57 degrees 29 minutes west $15\frac{4}{10}$ perches to a point; thence north 34 degrees 59 minutes west $55\frac{8}{10}$ perches to a point; thence south 32 degrees 31 minutes — 3 perches to a point; thence north 55 degrees 7 minutes east $5\frac{4}{10}$ perches; thence north 52 degrees 37 minutes east $14\frac{85}{100}$ perches to a point; thence north 34 degrees 5 minutes west $1\frac{19}{100}$ perches to the middle of the ditch; thence along the middle of said ditch and along the line of other land now or late of Matthias Powers south 55 degrees 3 minutes

west $67\frac{7}{10}$ perches to a point in the land now or late of David B. Kershaw; thence along the middle of a ditch to a line of said Kershaw's land south 33 degrees 58 minutes east $58\frac{55}{100}$ perches to the middle of a ditch; thence along the line of said Kershaw's land to the centre of the said back channel, and thence up the middle of said channel the various courses thereof to the place of beginning, containing 26 acres of land, more or less, being the same premises which Matthias Powers and wife, by indenture dated December 31st, 1863, and recorded in Philadelphia, in Deed Book "L. R. B." No. 8, page 148, granted and conveyed unto Edgar N. Black in fee.

Also all that certain tract or piece of land situate on Carpenter's island, in that part of the city of Philadelphia, 24th ward, formerly called Kingsessing, bounded and described as follows, to wit: Beginning at a stone, the intersection of the division line between lands of late Henry L. Churchman and Thomas Serrill of the newly embanked meadow as laid down in a certain survey made thereof by John Thompson, dated June 2, 1837, and recorded in Deed Book "S. H. F." No. 18, page 583, and the line being the middle of the footing ditch and bearing south 67 degrees 57 minutes west, the said division line bearing south 35 degrees east, thence along the line of the said footing ditch south 67 degrees 57 minutes west
27 $36\frac{66}{100}$ perches to a stone in the middle of said ditch; thence south 25 degrees 4 minutes west to low-water mark in the back channel of the River Delaware; thence along the same to the continuation to the above first-mentioned division line; thence along the same to the place of beginning, containing 8 acres 56 perches, more or less (being the same tract of land which John J. Henry and wife, by indenture dated August 8th, 1866, and recorded in Deed Book "L. R. B." 209, page 491, granted and conveyed unto Edgar N. Black in fee).

And also all the certain tract or piece of meadow and marsh land situate, lying, and being in Tinicum township, in the county of Delaware, bounded and described, according to survey and plan thereof made by Benjamin H. Smith, surveyor, February 1st, 1872, as follows: Beginning in the middle of the back channel (separating Martain's bar from Hog island) opposite the mouth of Bow creek, thence extending up the middle of the said Bow creek, on the bed thereof, by the several courses thereof along other land of E. N. Black to a stake or stone bearing north 55 degrees 20 minutes east and distance 72 feet from a stone in the next-mentioned line, and thence extending south 55 degrees 20 minutes west by other land formerly of Joseph Carson, now of the estate of William Alexander Bearing Bingham, a minor, 3,108 feet to a stake or stone in the northeastwardly side of Martain's lane; thence extending along the side of the said lane south 29 degrees 58 minutes east $491\frac{7}{10}$ feet to a stake or stone in the meadow or outer bank as established in the year 1872; thence extending still further by the said line to the middle of the back channel; thence down the said channel the several courses thereof to the line of low-water mark in the River Delaware on the outer edge of Martain's bar; thence ex-

tending up the River Delaware by the said low-water line to a point in the middle of the back channel first mentioned (separating Martain's bar from Hog island); thence extending up the middle of the said back channel to the place of beginning, containing in all 213 acres $27\frac{45}{100}$ perches according to recent surveys thereof made by Benjamin H. Smith, surveyor (being the same premises which by two indentures were granted and conveyed unto Edgar N. Black in fee, one thereof by Alexander Biddle and Charles Hare Hutchinson, guardians of William Alexander Baring Bingham, a minor, dated February 3, 1873, and recorded in the office for recording deeds in and for Delaware county, in Deed Book "H" No. 3, page 246, etc., the other thereof by George W. Henderson *et al.*, dated April 14th, 1860, and recorded, as aforesaid, in Deed Book "G" No. 2, page 415).

On the three last-described properties there is the aforesaid mortgage debt of $18,300, amounting, together with interest to August 14, 1891, to $27,733.94, under and subject to which the *scire facias* is issued.

All of the above-described premises, situate in Delaware county, are also subject to a mortgage dated May 30th, 1877, recorded in Delaware county, in Mortgage Book "U" No. 3, page 445, on which there is due for principal $10,000 and interest to November 30th, 1891, $6,007.89; in all, $16,007.89.

Under and subject to which this *scire facias* is issued.

And in and by the said indenture it was provided also if the said mortgagor, his heirs, executors, or administrators, should pay to the said mortgagee or to any person or persons entitled to the same the sum of nine thousand dollars, being the amount due and owing by him to the said Charles N. Black on the day of the date thereof, together with interest thereon from that day at the rate of 4 per cent. per annum, within one year from the date of the said indenture of mortgage, and should pay to the person or persons entitled to the same all moneys which may become due and owing to the representatives of the said Charles N. Black by reason of any pay-
28 ments they might make or which may be made out of the proceeds of his property mortgaged or pledged to secure the same within one year after the same becomes due and payable, with interest at the rate of six per cent. per annum, then this obligation and the estate hereby granted to be void or else to remain in full force and virtue;

And it is therein further granted and agreed that the debt due to the said Charles N. Black by the said mortgagor and the several debts which may become due and payable by him to any persons claiming under the will of Charles N. Black upon payment by them or out of any property they may be entitled to under his will shall be deemed and taken to constitute separate and distinct debts, in respect of which separate and distinct writs of *scire facias* may issue from time to time against separate and distinct parcels of the mortgaged premises, and that such writs may issue at any time after default made on the payment of the particular and distinct debt thereby secured in the same manner as if there were separate and

distinct mortgages for each of the said distinct debts and obligations upon each of the separate and distinct parcels of land thereby mortgaged;

And whereas the said Mary K. L. Black, being one of the executors of Charles N. Black, afterwards, to wit, on the 19th of August, 1887, paid the said several sums of six thousand dollars, and one thousand dollars, and five hundred dollars, and six hundred and sixty-nine dollars, together with the interest thereon to that date, viz., two thousand six hundred and seventy-nine dollars and nineteen cents, and together amounting to the sum of ten thousand eight hundred and forty-eight dollars and nineteen cents, and on the 16th of December, 1880, the said sum of four thousand six hundred and seventy dollars and one cent, together with interest thereon to that day, viz., eight hundred and forty-seven dollars and sixty cents, together amounting to the sum of five thousand five hundred and seventeen dollars and sixty-one cents;

And whereas the above-mentioned principal sums of ten thousand dollars and the interest thereon, viz., three thousand three hundred and thirty-seven dollars and sixty-six cents, secured by a mortgage bearing date May 30th, 1877, and the sum of ten thousand dollars and the interest thereon, viz., three thousand five hundred and sixty dollars and four cents, secured by the mortgage bearing date October 30th, 1876, still remain unpaid, and also the interest that has since accrued upon the said several sums so paid by the said Mary K. L. Black, executrix, and also the interest on the sums of ten thousand dollars and ten thousand dollars remaining unpaid still remain due and unpaid;

29 And whereas default has been made in the payment of the said several sums of nine thousand dollars, and of ten thousand eight hundred and ninety-one dollars and twenty-six cents, and of five thousand five hundred and seventeen dollars and sixty-one cents, and of ten thousand dollars, and of ten thousand dollars, and of the sums due on the said sums respectively for interest, as we have been given to understand;

And whereas Edgar N. Black has since deceased and letters of administration of his estate have been duly granted to Mary M. Black;

And the said Mary K. L. Black, mortgagee aforesaid, a citizen of the State of New York, praying that a fit remedy in this behalf may be provided, we command you, as before you were commanded, that by good and lawful men of your district you make known to the said Mary M. Black, administratrix aforesaid, a citizen of the State of Pennsylvania, that she be and appear before the judges of the circuit court of the United States for the eastern district of Pennsylvania, there to be held, on the first Monday of February, 1892, to show, if anything she knows or has to say, why the said mortgaged premises, with the appurtenances, ought not to be taken in execution and sold to satisfy the debt and interest aforesaid if to her it shall seem expedient; and have you then and there the names of those by whom you shall so make it known to her, and this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, at Philadelphia, this 27th day of January, in the year of our Lord one thousand eight hundred and ninety-two, and in the 116th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk Circuit Court U. S., East. Dist. of Penna.

(Endorsed:) Feb'y 1, 1892. Made known to Mary M. Black by leaving a true and attested copy of the within writ at her dwelling-house with an adult member of her family, to wit, James Lees, her hired man. So answers Wm. R. Leeds, U. S. marshal, per James Marshall, deputy. 191. Oct., 1891. C. C. U. S., E. D. Pa. Mary K. L. Black *vs.* Mary M. Black, adm'x E. N. Black. *Als. sci. fa.* surmtg. Filed Feb. 1, 1892. McMurtrie.

30 C. C. of the U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

October Sessions, 1891.
Sci. Fa. Surmortg.
No. 191.

Enter my appearance for the defendant in the above case.

FRANCIS TRACY TOBIN,
Att'y pro Def't.

To Samuel Bell, Esq., clerk U. S. C. C. for the E. D. of Penn.

Philadelphia, Thursday, February 4, 1892.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. O. S., '91. U. S. C. C., E. D. of Penn. *Sci. fa.* surmortg. No. 191. Appearance. Filed Feb. 4, 1892. Samuel Bell, clerk. M. Francis Tracy Tobin, att'y *pro* def't.

31 C. C. U. S., E. D. Pa.

BLACK
v.
BLACK. } 191. Oct., 1891.

Enter a rule on the defendant to plead in fifteen days or judgment *sec. reg.*

R. C. McMURTRIE, *For Pl'ff.*

Feb. 15, 1892.

Cl'k C. C. U. S.

Endorsed: 191. Oct., 1891. C. C. U. S., E. D. Pa. Black *v.* Black. Rule to plead. Filed Feb. 15, 1892. Samuel Bell, clerk. M. McMurtrie.

32 United States Circuit Court for the Eastern District of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

October Sessions, 1891.
No. 191.

Mary M. Black, administratrix of the estate of Edgar N. Black, deceased, being duly affirmed according to law, depose- and says: that she is the defendant in the above case, and that she has a just, true, and lawful defense to all of the plaintiff's claim of the nature and character as follows:

First. The above is a *scire facias* surm-rtgage for fourteen separate tracts of land, eight of which are situate in Delaware county, Pennsylvania, and six in Philadelphia county, Pennsylvania; and deponent is informed and believes that the circuit court of the United States has no lawful or equitable jurisdiction and the said action was improperly brought in the said United States circuit court.

Second. That the plaintiff, Mary K. L. Black, is executrix of the will of Charles N. Black, deceased; that the moneys mentioned in said mortgage belong and pertain to the estate of the said Charles N. Black, deceased, and that the above suit should have been brought by the said Mary K. L. Black as such executrix and not in her own name for her own personal use.

Third. That the plaintiff has not filed or placed upon record in said United States circuit court any declaration, statement, or paper showing and breach or breaches of any of the conditions mentioned and set forth in the said mortgage.

Fourth. That it is not properly set forth in the said writ of *scire facias* or in or upon the record of the said case that there was any breach or breaches on the part of the said mortgagor of the conditions mentioned and set forth in the said mortgage.

Fifth. That deponent is informed and believes that the plaintiff has not paid any of the sums or amounts of money mentioned
33 in the said mortgage, nor does it lawfully or properly appear nor is it set forth upon the record in the above case that the plaintiff has paid any of the said sums or amounts of *of* money whereby the plaintiff would be entitled to a writ or writs of *scire facias* upon the said mortgage.

Sixth. That the record shows that the said writ of *scire facias* was not lawfully or properly issued, because in the said mortgage it is provided and set forth that upon the breach of any of said conditions for each breach a separate and distinct writ of *scire facias* should issue against a separate and distinct tract or parcel of land.

Seventh. That deponent is informed and believes that the mortgagor, Edgar N. Black, during his lifetime paid to the plaintiff divers large sums of money for and in discharge of the indebtedness

of said mortgage, but that no credit has been given, stated, or allowed by the plaintiff for the same.

Eighth. That deponent is also informed and believes that the late Edgar N. Black during his lifetime paid taxes on land owned by the late Charles N. Black in Delaware county, Pennsylvania, kept the said land in order, and made improvements on the same, the cost and expenses of which amounts to over $25,000, which amount should be credited to the said Edgar N. Black and to his estate as a payment on said mortgage, but no credit has been stated, given, or allowed by the plaintiff for the same.

Ninth. That the signature of the late Edgar N. Black is genuine, but deponent is informed and believes that the signature of the said Edgar N. Black upon said mortgage was secured by the plaintiff by misstatements, fraud, misrepresentations upon the part of the said plaintiff, and by threats, meanances, and duress; that at the said time the said Edgar N. Black was sick, was suffering from the effects of a prolonged and protracted illness, was physically prostrated, and was mentally unable to transact business or to understand the full nature and import of said mortgage or the obligations or conditions thereof.

Tenth. That deponent is informed and believes that the
34 estate of Edgar N. Black, deceased, is not indebted to the plaintiff in any sums or amounts whatever.

Eleventh. All of which is true, as deponent is informed and believes and expects to be able to prove at the trial of the said case.

MARY M. BLACK.
MARY M. BLACK.

Affirmed and subscribed to before me this 15th day of February, A. D. 1892.

GEO. W. REED,
[SEAL.] *Notary Public.*

(Endorsed:) Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. U. S. C. C., E. D. of Penn. No. 191. Affidavit of defence. Filed Feb. 15, 1892. Francis Tracy Tobin, att'y for defendant.

35 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	October Sessions, 1891. No. 191.

The defendant comes and moves to quash the writ in the above case and assigns reasons therefore:

First. That the above is a *scire facias* surmortgage for fourteen

separate tracts of lands, eight of which are situate in Delaware county, Pennsylvania, and six in Philadelphia county, Pennsylvania, the said mortgages being *inter alia* to secure the payment of the amounts set forth in several distinct mortgages therein recited.

Second. That the circuit court of the United States has no lawful or equitable jurisdiction and the said action was improperly brought in the said United States circuit court.

Third. That the plaintiff, Mary K. L. Black, is executrix of the will of Charles N. Black, deceased; that the moneys mentioned in said mortgage belong and pertain to the estate of the said Charles N. Black, deceased, and the above suit should have been brought by the said Mary K. L. Black as such executrix and not in her own name for her own personal use.

Fourth. That the plaintiff has not filed or placed upon record in the said United States circuit court any declaration, statement, paper, or averment showing any breach or breaches of any of the conditions mentioned and set forth in the said mortgage.

Fifth. It is not lawfully or properly set forth in the said writ of *scire facias* or in or upon the record of said case that there was any breach or breaches on the part of the said mortgagor or the
36 conditions mentioned and set forth in the said mortgage.

Sixth. That it does not appear nor is it set — upon the record in the above case that the plaintiff is lawfully entitled to a writ of *scire facias* upon the said mortgage.

Seventh. That the record shows that the said writ of *scire facias* was not lawfully or properly issued, because in the said mortgage it is provided and set forth that upon the breach of any of the said conditions for each breach a separate and distinct writ of *scire facias* should issue against a separate and distinct tract or parcel of land, and that they should be separate and distinct mortgages.

MARY M. BLACK.

STATE OF PENNSYLVANIA, } *ss:*
County of Philadelphia, }

Mary M. Black, being duly affirmed according to law, deposes and says that she is the defendant in the above case, and that the facts set forth in the foregoing motion to quash are true, to the best of her knowledge, information, and belief.

MARY M. BLACK.

Affirmed and subscribed to before me this 17th day of February, A. D. 1892.

GEO. W. REED,
[SEAL.] *Notary Public.*

(Endorsed:) Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October session, 1891. C. C. U. S., E. D. of Penn. No. 191. Motion to quash and proceedings to stay in the meantime. Filed Feb. 18, 1892. Francis Tracy Tobin, att'y for defendant.

37 C. C. U. S., E. D. of Penn.

BLACK
vs.
BLACK. } October Sessions, 1891. No. 191.

PHILADELPHIA, THURSDAY, *February* 18, 1892.

R. C. McMurtrie, Esq.

DEAR SIR: I hereby give you notice that on Friday, February 19th, A. D. 1892, I will ask for a rule on plaintiff in the above case to show cause why the *scire facias* surmortgage should not be quashed and proceedings to stay in the meantime.

I will also on that day ask the court to fix a time to which to make the said rule returnable, so that you can argue the same.

Yours respectfully, FRANCIS TRACY TOBIN.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Letter of Francis Tracy Tobin, Esq., to R. C. McMurtrie, Esq., of notice of application for a rule on plaintiff on Friday, February 19th, A. D. 1892, for a time to be fixed for argument of the same. Filed Feb. 19, 1892. Samuel Bell, clerk. M. Francis Tracy Tobin, att'y *pro* defendant.

38 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administrator of Edgar N. Black and a Citizen of the State of Pennsylvania. } October Sessions, 1891. No. 191.

The defendant comes and moves to quash the writ in the above case and assigns reasons therefore:

First. That the above is a *scire facias* surmortgage for fourteen separate tracts of land, eight of which are situate in Delaware county, Pennsylvania, and six in Philadelphia county, Pennsylvania, the said mortgages being given *inter alia* to secure the payment of the amounts set forth in several distinct mortgages therein recited.

Second. That the circuit court of the United States has no lawful or equitable jurisdiction and the said action was improperly brought in the said United States circuit court.

Third. That the plaintiff, Mary K. L. Black, is executrix of *of* the will of Charles N. Black, deceased; that the moneys mentioned in said mortgages belong and pertain to the estate of the said Charles N. Black, deceased, and the above suit should have been brought by the said Mary K. L. Black as such executrix and not in her own name for her own personal use.

Fourth. That the plaintiff has not filed or placed upon record in the said United States circuit court any declaration, statement,

paper, or averment showing any breach or breaches of any of the conditions mentioned and set forth in the said mortgage.

Fifth. That it is not lawfully or properly set forth in the said writ of *scire facias* or in or upon the record of said case that there was any breach or breaches on the part of the said mortgagor
39 of the conditions mentioned and set forth in the said mortgage.

Sixth. That it does not appear nor is it set forth upon the record in the above case that the plaintiff is lawfully entitled to a writ of *scire facias* upon the said mortgage.

Seventh. That the record shows that the said writ of *scire facias* was not lawfully or properly issued, because in the said mortgage it is provided and set forth that upon the breach of any of the said conditions for each breach a separate and distinct writ of *scire facias* should issue against a separate and distinct tract or parcel of land, and that they should be separate and distinct mortgages.

MARY M. BLACK.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss*:

Mary M. Black, being duly affirmed according to law, deposes and says that she is the defendant in the above case, and that the facts set forth in the foregoing motion are true, to the best of her knowledge, information, and belief.

MARY M. BLACK.

Affirmed and subscribed to before me this 19th day of February, A. D. 1892.

ANDREW ZANE,
[SEAL.] *Notary Public.*

(Endorsed:) October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Motion to quash. And now, to wit, February 19th, 1892, on motion of Francis Tracy Robin, Esq., attorney for defendant, a rule is granted upon the plaintiff to show cause why the writ of *scire facias* in the above case should not be quashed, returnable March 1st, A. D. 1892, at 10 a. m. Francis Tracy Tobin, att'y for defendant. Filed Feb. 19, 1892.

40 PHILADELPHIA, *February* 23, 1892.

Thomas Green, Esq., recorder of deeds.

DEAR SIR: Today, when I left the list of mortgage given by Edgar N. Black, recorded in your office, to be copied and certified, you stated that I could have them in one week.

Please let me know if I can have them copied and certified at that time.

Yours respectfully, FRANCIS TRACY TOBIN.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen

of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Letter of Francis Tracy Tobin, Esq., to Thomas Green, Esq., recorder of deeds for the city and county of Philadelphia. Filed Feb. 27, 1892. Samuel Bell, clerk. M. Francis Tracy Tobin, att'y *pro* defendant.

41 Francis Tracy Tobin, attorney & counselor at law, 906 Walnut street, Philadelphia, Pennsylvania.

PHILADELPHIA, TUESDAY, *February* 23, 1892.

John H. Kerlin, Esq., recorder of deeds for Delaware Co., Pa.

DEAR SIR: When I was in Media last Saturday you stated that it would be two weeks from today (February 23rd) before you could let me have certified copies of mortgages given by Edgar N. Black as are recorded in your office.

Please let me know if they will be ready at that time.

Please send me, under seal, a statement that certain mortgages given by Edgar N. Black which were looked for last Saturday in the following places, W No. 3, page 445, &c.; K No. 3, page 22, &c., and S No. 3, page 139, &c., cannot be found.

Yoyrs respectfully, FRANCIS TRACY TOBIN.

(Endorsed:) October session, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Letter of Francis Tracy Tobin, Esq., to John H. Kerlin, Esq., recorder of deeds for Delaware county, Pennsylvania. Francis Tracy Tobin, att'y *pro* defendant. Filed Feb. 27, 1892.

42 Thomas Green, recorder of deeds, room 154 city hall, Philadelphia.

PHILADELPHIA, *February* 23, '92.

Francis Tracy Tobin, Esq., 906 Walnut St., Phila.

DEAR SIR: Your order for certified copy of mortgage from E. N. Black to John Bohlen, the same to R. C. McMurtry, and of the same to Mary K. Black received this date. The same will be prepared and certified to and ready to deliver to you on Tuesday next.

Yours respectfully, THOMAS GREEN,
Recorder of Deeds,
Per K. T. F.

Endorsed: Filed Feb. 29, 1892. Samuel Bell, clerk. M. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October session, 1891. C. C. U. S., E. D. of Penn. No. 191. Letter of Thomas Green, Esq., recorder of deeds for the city and county of Philadelphia, Pennsylvania, to Francis Tracy Tobin, Esq. Francis Tracy Tobin, att'y for defendant.

43 Office of recorder of deeds. Delaware Co., Pa., John H. Kerlin, recorder.

MEDIA, PA., 2, 24, 1892.

Francis T. Tobin, Esq.

DEAR SIR: As the list of mortgages left here on Saturday last was incorrect, I give you a certificate showing all unsatisfied mortgages against Edgar N. Black, two of which, Ra., page 553, & Ue., page 132, are not against the property known as Hog island, & the two, K, page 755, & K, page 757, have no doubt been paid, but are not properly satisfied. In your list you *inter alia* give me W No. 3, page 445, S No. 3, page 139, & K 3, page 22; these I cannot find. If you will note the correctness & give me the list you wish certified copies made, I will have them ready for delivery March 9th. It will be impossible to let you have them sooner.

Yours, &c., H. T. WALTER,
Deputy Recorder.

(Endorsed:) October session, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Letter of H. S. Walter, Esq., deputy recorder of deeds for Delaware county, Pennsylvania, to Francis Tracy Tobin, Esq. Francis Tracy Tobin. Filed Feb. 29, 1892.

44 DELAWARE COUNTY, *ss:*

I do not find on record in this office any unsatisfied mortgages given or executed by Edgar N. Black except the eleven (11) recorded as follows:

K, page 755; K, page 757;
X, page 469; R No. 2, page 553;
Z No. 2, page 281; K No. 3, page 223;
R No. 3, page 581; S No. 3, page 129;
U No. 3, page 132; U 3, page 445, and
T No. 5, page 133.

Witness my hand and seal of office this twenty-third day of February, A. D. 1892.

H. WALTER,
[SEAL.] *Deputy Recorder.*

(Endorsed:) October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Certificate under seal of H. S. Walter, Esq., deputy recorder of deeds for Delaware county, Pennsylvania, of mortgages given by Edgar N. Black, Esq., at recorder in Delaware county, Pennsylvania. Francis Tracy Tobin, att'y *pro* defendant. Filed Feb. 29, 1892.

45 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	October Sessions, 1891. No. 191.

Mary M. Black, administratrix of the estate of Edgar N. Black, deceased, being duly affirmed according to law, doth depose and says that she is the defendant in the above-named case; that the deponent does not make the motion to quash the writ of *scire facias* and proceedings to stay in the meantime, and asks that a rule will be granted on the plaintiff, returnable at a future time set by the court, through the deponent's attorney, Francis Tracy Tobin, Esq., for the purpose of delay, but in order that the said deponent can make a proper defense in the said case, and that the said deponent, through her attorney, can have proper and ample time to prepare for the argument of the said motion and rule, and such time is absolutely necessary.

MARY M. BLACK.
MARY M. BLACK.

Affirmed and subscribed to before me this 29th day of February, A. D. 1892.

[SEAL] ANDREW ZANE,
Notary Public.

(Endorsed:) Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Pa. No. 191. Affidavit of Mary M. Black asking for time to prepare for argument for motion and rule; is not for delay, but is necessary. Filed Feb. 29, 1892. Francis Tracy Tobin, att'y for defendant.

46 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	October Session, 1891. No. 191.

Francis Tracy Tobin, Esq., being duly sworn according to law, doth depose and says that he is the attorney of record for defendant in the above case; that he has tried as hard as possible to get up the record and papers in the above in order to argue the rule on Tuesday March 1st, A. D. 1892, besides the work of preparing the case for argument and the clerical work incidential thereto. The

deputy recorder of deeds for Delaware county, Pennsylvania, writes that he cannot get up the certified copies of the mortgages given by Edgar N. Black by Tuesday, March 1st, 1892, and that some of the mortgages cited in the *scire facias* as being recorder in Delaware county, Pennsylvania, cannot be found on record at the said place (Media); two mortgages given by Edgar N. Black appears to have been paid, but not properly satisfied, as the deputy recorder of deeds for Delaware county, Pennsylvania, reports by letter and under seal of the said office of the recorder of deeds for Deleware county, Pennsylvania.

The recorder of deeds for the city and county of Philadelphia, Pennsylvania, reports that he will not be able to get up certified copies of the mortgages given by Edgar N. Black in time for argument of the said rule on Tuesday March 1st, 1892. It is absolutely necessary that further and ample time be given in order to prepare for argument of the said rule.

FRANCIS TRACY TOBIN.

Sworn and subscribed to before me this twenty-ninth day of February, A. D. 1892.

GEO. W. REED,
[SEAL.] *Notary Public.*

47 (Endorsed:) October session, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Affidavit of Francis Tracy Tobin, Esq., attorney, for necessary time to prepare for argument of motion and rule. Francis Tracy Tobin, att'y *pro* defendant. Filed Fe*d.* 29, 1892.

48 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	October Sessions, 1891. No. 191.

E. Tracy Tobin, being duly sworn according to law, doth depose and says that he is making copies of the record and papers in the above case; they are very large, and, using his utmost speed, it will be impossible to have them ready by Tuesday, March 1st, A. D. 1892.

E. TRACY TOBIN.

Sworn and subscribed to before me this twenty-ninth day of February, A. D. 1892.

GEO. W. REED,
[SEAL.] *Notary Public.*

(Endorsed:) October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Affidavit of E. Tracy Tobin relative to making copies of record and papers in above case. Francis Tracy Tobin, att'y *pro* defendant. Filed Feb. 29, 1892.

49 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a citizen of the State of Pennsylvania.	October Sessions, 1891. No. 191.

The defendant comes and moves to quash the writ in the above case and assigns an additional reason therefore to those already assigned and filed:

Eighth. That the *scire facias* is irregularly and imperfectly made out and is defective, as several mortgages mentioned in the said *scire facias* cannot be found where they are said to be recorded in the said *scire facias*.

MARY M. BLACK.

STATE OF PENNSYLVANIA, } *ss:*
City of Philadelphia, }

Mary M. Black, being duly affirmed according to law, deposes and says that she is the defendant in the above case, and that the additional facts set forth in the foregoing motion to quash *is* true, to the best of her knowledge, information, and belief.

MARY M. BLACK.

Affirmed and subscribed to before me this twenty-ninth day of February, A. D. 1892.

[SEAL.] GEORGE W. REED,
Notary Public.

50 (Endorsed:) October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Additional reason for motion to quash writ of *scire facias*. Filed Mar. 1, 1892. Samuel Bell, clerk. M. Francis Tracy Tobin, att'y for defendant.

51 TUESDAY, *March 1st*, 1892.

The court is opened pursuant to adjournment.
Present: Hon. William Butler, judge.

BLACK *vs.* BLACK. } No. 191. October Sess., 1891.

Surrule to quash *sci. fa.* surmortgage.

Mr. Tobin, for —; Mr. McMurtrie, *contra*.
Rule discharged.

52 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } October Sessions, 1891. No. 191.

The defendant pleads *nil debet*, payment, payment with leave, set-off.

FRANCIS TRACY TOBIN,
Att'y for Defendant.

Philadelphia, Wednesday, March 2nd, A. D. 1892.

To Samuel Bell, Esq., clerk C. C. U. S., E. D. of Penn.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October session, 1891. C. C. U. S., E. D. of Penn. No. 191. Pleas. Filed Mar. 2, 1892. Samuel Bell, clerk. Francis Tracy Tobin, att'y for defendant.

53 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } October Sessions, 1891. No. 191.

Assignment of Errors.

First. That the learned court erred in holding that the circuit court had jurisdiction of the action.

Second. That the learned court erred in holding that the writ should not be quashed for want of jurisdiction.

FRANCIS TRACY TOBIN,
Att'y pro Defendant.

March 4th, 1892.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Assignment of errors. Filed Mar. 4, 1892. Samuel Bell, clerk. K. Francis Tracy Tobin, att'y *pro* defendant

54 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 12th day of April, A. D. 1892, come the parties aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit:

John D. Snyder, John H. Witherow, Winfield Sargent, Jr., Amos Bonsall, John S. Mann, Stephen J. Smith, Albert Beichlag, James K. Mooser, David E. Mayer, Jesse N. Rooke, W. Moore Wharton, Albert G. Rowland, who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth, &c., in the issue joined in this case.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid upon their oaths or affirmations aforesaid respectively do say that they find for the plaintiff, and assess the damages at thirty-one thousand three hundred and forty-one $\frac{80}{100}$ dollars ($31,341.80).

55 Circuit Court U. S., E. D. Penna.

MARY K. L. BLACK *vs.* MARY M. BLACK. } October Sessions, 1891. No. 191.

The defendant comes and moves for a new trial in the above case and assigns as reasons therefor:

1. Because the court admitted in evidence the mortgage of Edgar N. Black to Mary K. L. Black, dated August 19, 1887, recorded at Media, in Mortgage Book T No. 5, page 133.

2. Because separate writs of *scire facias* were not issued.

3. Because no assignments or averments of breaches of the conditions of said mortgage have been filed in said suit.

4. Because the court admitted the testimony of John D. Rogers to prove the signature of Edgar N. Black to the promissory notes.

5. Because the court admitted as evidence the promissory note signed by Edgar N. Black.

6. Because the court admitted in evidence the check of Mary K. L. Black to R. C. McMurtrie to prove the payment of money by Mary K. L. Black to said R. C. McMurtrie.

7. Because the court admitted in evidence the bank book of said R. C. McMurtrie.

8. Because the court admitted in evidence the letter of Mary K. L. Black to R. C. McMurtrie to prove that the said Mary K. L.

Black had forwarded to the said R. C. McMurtrie inclosed in said letter a check in payment of one of the amounts mentioned in said mortgage.

9. Because the court admitted in evidence the letter of Edgar N. Black to R. C. McMurtrie, dated December 25, 1886.

10. Because there was no evidence of a breach of any of the conditions mentioned in said mortgage and no evidence that Edgar N. Black had failed to pay the amounts of money mentioned in said mortgage.

11. Because the verdict was against the law.

12. Because the verdict was against the evidence.

FRANCIS TRACY TOBIN,
Attorney for Defendant.

[Endorsed:] 191. C. C. U. S., E. D. Pa. October sess., 1891. Mary K. L. Black *v.* Mary M. Black. Motion and reasons for new trial. Filed Apr. 16, 1892. Samuel Bell, clerk. K. Tobin, for def't.

56 MARY K. L. BLACK
vs.
MARY M. BLACK, Administratrix of Edgar N. Black, Deceased. } No. 191. Oct. S., 1891.

Surmotion for a new trial.

APRIL 26, 1892.

Per curiam:

The motion for new trial is denied.

Endorsed: No. 191. October S., 1891. Mary K. L. Black *vs.* Mary M. Black, administratrix of Edgar N. Black, deceased. Surmotion for a new trial. Order overruling motion. Filed Apr. 26, 1892. Samuel Bell, clerk. M.

And afterwards, to wit, on the 26th day of April, A. D. 1892, the motion for new trial is denied, and judgment is ordered to be entered on the verdict in favor of plaintiff and against the defendant.

Whereupon judgment is entered accordingly.

57 C. C. U. S.

BLACK
v.
BLACK.

And now, April 28th, 1892, on the application being made to fix the security by the def'd't on the writ of error, it is ordered that if the writ of error is to operate as a supersedeas the bail shall be on the sum of $8,000.

If it is not to act as a supersedeas the amount shall be $1,000.

BY THE COURT.

Endorsed: 191. Oct. sess., 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black. Order of court fixing amount of security surwrit of error to Supreme Court U. S. Filed Apr. 28, 1892. Samuel Bell, clerk. M.

58 *Bill of Exceptions.*

In the Circuit Court of the United States for the Eastern District of Penna., of October Sessions, 1891.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } No. 191.

Be it remembered that in the said term of October, 1891, came the said plaintiff into the said court and impleaded the said defendant in a certain plea of *sci. facias* surmortgage, &c., in which the said plaintiff declared (*pro ut narr.*) and the said defendant pleaded (*pro ut* pleas), and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the Honorable Marcus W. Acheson, one of the judges of the said court, the twelfth day of April, 1892, the aforesaid issue between the said parties came to be tried by a jury of the said county for that purpose duly empannelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issue, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff, to sustain the issue, offered in evidence a mortgage, to wit, the mortgage recited in the *scire facias*, dated August 19th, 1887, given by Edgar N. Black to Mary K. L. Black, recorded at Media, Delaware county, Pennsylvania, the 20th day of August, 1887, in Mortgage Book T No. 5, page 133, &c. The defendant, by her counsel, objected:

59 I. Because said instrument or mortgage recited certain conditions, and no assignment or averment of the breach of any condition therein recited has been alleged or filed of record in this case.

II. Because separate writs of *scire facias* have not been issued, as provided in said instrument.

III. Because this honorable court has no jurisdiction over the controversies or facts set forth in said instrument.

The court overruled the objection.

Counsel for the defendant excepted, and the court sealed this bill of exceptions.

And the plaintiff, to further sustain said issue, called as a witness John Rodgers, and offered to prove by the witness the signature of Edgar N. Black to a certain promissory note.

Counsel for the defendant objected because, as Mary K. L. Black was not allowed to prove the signature of Edgar N. Black, therefore it was not proper to do the same by John Rogers what the court would not allow to be done by Mary K. L. Black.

The court overruled the objection.

Counsel for the defendant excepted, and the court sealed this bill of exceptions.

And the plaintiff, to further sustain said issue, offered in evidence a promissory note signed by Edgar N. Black, being the note recited in said mortgage, the signature having be*ing* proved by John Rogers.

Counsel for the defendant objected.

60 The court overruled the objection.

Counsel for the defendant excepted, and the court sealed this bill of exceptions.

The plaintiff called for a letter from R. C. McMurtrie to Edgar N. Black, the mortgagor, dated Sept. 13, '86; also for the account of a statement accompanying the same, and the said papers not being produced proved the copies of the papers thus sent and the letters and certificate received from the said E. N. Black, bearing date Dec. 28, 1886, which letter, account, letters, & certificate read as follows:

416 WALNUT ST., *Sept.* 13, 1886.

DEAR SIR: I enclose statement of ac. of the various mortgage and other loans held by me or those I represent. I beg you will examine the ac. & let me know if there is anything omitted.

Yours truly, R. C. McMURTRIE.

Edgar N. Black, Esq., Kingsessing P. O., Philadelphia.

61 *Statement C. N. & E. N. Black—Mortgages Held by R. C. McMurtrie—John & C. M. Bohlen's Estate.*

Held by—	Mortgagor.		Int.	Principal.	Total.
C. M. B., trust.	E. N. Black mortg..	.....	.....	11,000	
	Int. to July 1, '86..	3,802 60			
	Nov., 1885, cash....	189 78			
			3,612 82	.....	14,612 82
"	E. N. & C. M. Black mtg.	.....	.....	10,000	
	Int. to June 1, '86...	3,522 72			
	Nov., 1885, cash....	185 06			
			3,337 66	.....	13,337 66
"	E. N. Black mtg....	.....	.....	6,180 49	
	Int. to Aug. 1, '86..	.....	927 06	.....	7,107 55
J. B.....	E. N. B. mtg.... ..	.....	.....	15,000	
	Int. to May 10, '86..	4,765 51			
	Nov., 1885, cash...	254 12			
			4,511 39	.....	19,511 39
Ch. %....	C. N. & E. N. B. mtg.	.....	.....	10,000	
	Int. to Oct. 1, '86...	3,745 26			
	Nov., 1885, cash....	185 22			
			3,560 04	.....	13,560 04
R.C. McM.	E. N. B. mtg.....	.....	.....	18,300	
	Int. to Aug. 1, '86..	5,871 11			
	Nov., '85, cash.....	281 07			
			5,590 04	.....	23,890 04
"	E. N. B. loan	.....	.....	8,169	
	Int. to July 1, '86...	2,268 81			
	Nov., '85, cash.....	104 75			
			2,164 06	.....	10,333 06
	By the statement rendered Aug. 12, '85.	... .	$23,703 07	$78,649 49	$102,352 56
	The interest due was	.....	21,334 12		
	An increase of.....	.....	2,369 05		

July 5, '86.—Note, 6 m., $4,670.01; of this $2,772.50 is interest included in the above statement of interest, the original note being given, at your suggestion, for accrued interest, and since renewed.

R. C. McMURTRIE.

9, 13, '86.

62 DEAR RICHARD: It seems I had not given your accounts proper reflection. I now see clearly that I have every fact in my possession that is necessary for the fullest examination. Knowing that you are eager for a settlement & feeling you so deserve most fully, I have concluded to send you what I suppose will be satisfactory (if not, prepare for me to sign what is, if you please). If, however, within a reasonable time I find a gross error, no doubt you will correct it. You having the same privilege until such a time, however, you have most fully, it seems to me, what you ask for, so that you are fully provided whatever may occur. I trust my carelessness will not be the means in the future of irritating you the

slightest. Further, if it is not asking too much, I should still like to have a list of the incumbrances and their original dates.

Truly yours, EDGAR N. BLACK.

P. S.—As to the rate of interest, of course, allowing it to run too long unpaid, six (6) per cent. is no better than five (5) punctually paid.

E. N. B.

This is to certify that the several interest accounts against me held by Richard C. McMurtrie for himself and as trustee which he has sent me up to Oct. 13th, 1886, inclusive, have been examined and found to be correct.

Dated Dec. 25th, 1886.

EDGAR N. BLACK.

Counsel for the defendant objected.

The court overruled the objection.

Counsel for the defendant excepted, and the court sealed this bill of exceptions.

63 Whereupon the plaintiff closed her case. The defendant offered no testimony. The court charged the jury.

And thereupon, the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion so excepted to do not appear upon the record —.

And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 29th day of April, 1892.

M. W. ACHESON, [L. S.]
Circuit Judge.
—— ——. [L. S.]

[Endorsed:] Cir. court of the U. S., east. dist. of Pa. No. 191. October term, 1891. Bill of exceptions. Black *vs.* Black. Filed April 29, 1892. Samuel Bell, clerk, &c.

64 C. C. U. S., E. D. Pa.

BLACK *vs.* BLACK. } Oct., 1891. No. 191.

R. D., $31,341.80; int. fr. 4, 12, '92.

The clerk will issue a *levari facias,* returnable to the next return day.

R. C. McMURTRIE, *For Pl'ff.*

Sept. 30, 1892.

Samuel Bell, Esq., clerk C. C. U. S., E. D. Pa.

Endorsed: 1. Oct sess., 1892. 191. Oct., 1891. C.C.U.S. Black *v.* Black. Præcipe for *lev. fac.* Filed Oct. 3, 1892. Samuel Bell, clerk. M. R. C. McMurtrie.

65 UNITED STATES OF AMERICA, } ss:
Eastern District of Pennsylvania. }

To the United States marshal for the eastern district of Pennsylvania:

We command you that without any other writ from us of the lands and tenements which were of Edgar N. Black in his lifetime, viz:

1st. All that certain lot or piece of meadow ground situate on State or Province island, in the 24th ward of the city of Philadelphia (formerly in the township of Kingsessing), bounded and described, according to a survey made thereof by Edward Lynch, surveyor, June 13, 1802, as follows, to wit: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill river, thence by the middle of a ditch dividing this from land released to Elizabeth Taylor south thirty-nine degrees thirty minutes east fifty and one-tenth perches to the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of said bank the several courses thereof forty-nine and one-tenth perches or thereabout to a stake by the side of Eagle creek; thence along the same several courses thereof seventy-three seven-tenths perches to a stake in the middle of the aforesaid road or lane; thence along the middle thereof north forty-seven degrees forty-five minutes east twenty-eight and one-tenth perches to the place of beginning, containing fifteen acres and five perches, exclusive of the creek, and also the cripple and marsh land which lieth between the said described embanked lot and low-water mark on Delaware river and Eagle creek.

2d. Also all that lot or piece of ground (being the northeasternmost part of four contiguous lots or pieces of ground marked on a plan of said State or Province island Nos. 16, 17, 18, and 19) bounded and described, according to the aforementioned survey, as follows, viz: Beginning at a stake in the middle of the road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill, thence extending along the middle of a ditch by lot No. 15, now or late belonging to Edward Sprogell, south forty-two degrees east forty-six nine-tenths perches to a stake in the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of the said bank south thirty-eight three-fourths degrees west twenty-eight perches to a stake and south fifty and one-half degrees west eighteen and three-tenths perches to a stake; thence along the middle of another ditch dividing this from the remainder of the aforesaid four contiguous lots released to the said Edward Sprogell north thirty-nine degrees thirty minutes west fifty and one tenth perches to a stake in the middle of said road; thence extending by the same north forty-seven and one-fourth degrees east forty-three and seven-tenths perches to the place of beginning, con-

taining thirteen acres and one hundred and forty perches, together with the cripple and marsh land which lieth between the said last-described embanked land and low-water mark on Delaware river.

3d. Also all that lot and piece of ground or meadow situate in the 24th ward aforesaid (formerly the township of Kingsessing), being part of State or Province island aforesaid, and the lot marked in the general plan thereof No. 15, beginning at a stake near a large old stump standing on the edge of the cripple and a small distance south of the Hospital wharf, thence by the said cripple south forty degrees west twenty-one and six-tenths perches to a stake set in the bank in the line of lot No. 16, sold to Charles Miller; thence by said lots north forty degrees thirty minutes west forty-six perches to a stake set in the middle of the road leading southwestwardly from the Hospital road through the marsh; thence by the said road north forty-seven degrees forty-five minutes east thirty-two perches to a stake set for a corner in the middle of the Hospital road; thence by the same road and the line of the Hospital lot south twenty-eight degrees thirty minutes east forty-five perches to the first-mentioned stake and place of beginning, containing by a resurvey seven acres and one-fourth and twenty-one perches, exclusive of the flat or guard along the river; and also all the cripple and marsh land which lieth between the above-described embanked lot and the low-water mark on the Delaware river.

4th. Also all that lot or piece of ground situate on the said State or Province island, in the 24th ward aforesaid, marked on the aforesaid plan of said island No. 23, bounded and being as follows, viz: Beginning at a stake in the middle of the road leading from the (late) pest-house to the ferry on Schuylkill, thence extending by lot No. 22 south forty-seven degrees forty-five minutes west fifty-nine perches and seven-tenths to a post; thence by lot No. 21 north forty-two degrees fifteen minutes west twenty perches to a post; thence by lot No. 24 north forty-seven degrees forty-five minutes each sixty-four and four-tenths perches to a stake in the middle of the aforesaid road; thence along the middle thereof south twenty-eight degrees thirty minutes east twenty and five-tenths perches to the place of beginning, containing seven acres and one hundred and twenty perches of land, be the same more or less.

5th. Also a strip of land, three-tenths of a perch in width, extending along the boundary line of the tracts or parcels of land above described, No. 1 and 2, but which is now included in and forms part of the tracts or parcels described as No. 1.

66 6th. Also all the cripple marsh meadow land and alluvion lying adjacent to the aforedescribed parcels between the present bank and the low-water mark of the inner channel of the River Delaware, in front thereof, extending from a line opposite to the bank across the ditch or drain called Eagle creek along said low-water mark of the said channel of the River Delaware to the boundary line of the property now owned by the United States, at present in the tenancy and occupation of the said Edgar N. Black, as their lessees, being the same premises which William Jacob Wonderly and Phœbe Suplee, his wife, by a certain indenture, dated February 19, 1859,

recorded at Philadelphia, in Deed Book A. D. B. No. 51, page 459, granted and conveyed unto the said Edgar N. Black in fee.

The improvements on the six tracts of ground above described are a three-story frame house, a small frame house, hay scales, hay barrack.

7th. And also all that certain lot or piece of ground situated in the 24th ward aforesaid (formerly the township of Kingsessing) bounded and described as follows: Beginning at a stake on the top of the bank in direct continuation of the line of the middle of Eagle creek, thence up the middle of said creek by other land of Black north forty-seven degrees nineteen minutes west twelve perches and eleven hundredths and north sixty-three degrees west five perches and two hundredths to a stake opposite the middle of a new ditch, made for the dividing line between this and other ground, formerly of Pearson Serrill; thence along middle of said ditch south forty-eight degrees west forty-four perches and five hundredths to the middle of a ditch dividing this from land of Matthias Powers; thence along the line of said Powers' land the six following courses and distances, viz., along the middle of said ditch south thirty-four degrees five minutes east seventeen perches to a stake in the top of the old bank; thence along the top of the bank south fifty-two degrees thirty-seven minutes west fourteen perches and eighty-five hundredths to a stake and south fifty-five degrees seven minutes west five perches and four-tenths to a stake near a buttonwood, thence across the meadow south thirty-four degrees fifty-nine minutes east fifty-five perches and eight-tenths to a stake in the bank, thence along the bank north thirty-two degrees thirty-one minutes east three perches, thence across the flats south fifty-seven degrees and twenty-nine minutes east fifteen perches and four-tenths to the line of low-water mark in the back channel of the River Delaware, thence along the said low-water mark or line north twenty-eight degrees four minutes east sixty-five perches and fifty-six hundredths and north thirty-eight degrees and fifty-four minutes east sixteen perches and six-tenths to a stake, thence across the flats by other land of said Black north fifty-three degrees twenty-nine minutes west forty-three perches and eight-tenths to the stake in the bank and place of beginning, containing in the said boundaries thirty-one acres and ninety-four perches and ninety-four hundredths, more or less, together with all the land, being about one hundred perches additional, lying directly in front of the said described tract between said low-water line and the middle of the said back channel of the Delaware river, being the same premises which Isaac S. Serrill and others, by indenture bearing date the twenty-fifth day of September, anno Domini eighteen and sixty-two, duly executed and acknowledged and intended to be forthwith recorded, according to law, granted and conveyed unto the said Edgar N. Black in fee.

There are no improvements on this tract.

On the above-described properties there is a mortgage debt of ten thousand dollars, amounting, together with interest to November 10, 1891, to fifteen thousand three hundred and forty-one dollars and nineteen cents. The mortgage bears date December 22, 1862,

and is recorded at Philadelphia, in Mortgage Book A. C. H. No. 41, page 508, under and subject to which this *levari facias* is issued.

8th. All those eight several contiguous tract- or parcels of land situate, lying, and being on Hog island, in the River Delaware, in the county of Delaware, in the State of Pennsylvania, *on* which are marked upon a plan of survey made by Elijah Porch, dated October 10, 1816, as Nos. 1, 2, 3, 6, 7, 8, 9, 10, and together bounded and described as follows:

Beginning at a post in the cross-bank dividing the said lands from lands now of John Black and formerly of Samuel Whitall and corner of lots marked on said plan Nos. 3, 4, thence by a line dividing the said lots Nos. 3, 4 and 3, 5 and 8, 11 north seventy-nine degrees east one chain and seventy-five links; thence by the line of lot No. 5 five chains and fifty links to a point; thence north sixty degrees east four chains and seventy links to the line or ditch dividing lots marked on said plan Nos. 3, 8; thence south seventy-eight degrees west five chains and ninety links to the bank of the back channel; thence to the middle of the back channel, which divides the island from the mainland; thence in a southerly direction along the centre of the said back channel to the low-water mark in the River Delaware, and thence eastwardly by the line of the low-water mark along and around the shore of the said island to a point opposite to a post by the side of the bank on the southerly side of the island and corner of lots marked on said plan Nos. 1 and 2; also a corner of lands now of John Black, late of Samuel Whitall aforesaid; thence along the line of the said cross-bank, the boundary or division line of the lands thereby granted and those of John Black, north fifteen minutes west to the place of beginning, and containing within the banks, by estimation and according to said survey, ninety-three acres, be the same more or less, bounded on the
67 north by the lots marked on the said plan Nos. 4, 5, and 11, on the west and south by the low-water mark of the River Delaware, and east by lands formerly of Samuel Whitall, and now the property of John Black, being the same premises which Isaac Reeves and Samuel M. Reeves and Hannah W., his wife, by indenture dated April 11, 1857, and recorded in the office for recording deeds, etc., in and for Delaware county, in Deed Book D No. 2, page 638, granted and conveyed unto the said Edgar N. Black in fee.

The improvements consist of two and one-half story frame house and barn; also a three-story frame house and barn.

On this property there is a mortgage debt of five thousand dollars, amounting, together with interest to November 10, 1891, to seven thousand six hundred and seventy dollars and fifty-nine cents. The mortgage bears date October 1, 1867, and is recorded in Delaware county, in Mortgage Book X, page 469; also a mortgage debt of eighteen thousand three hundred dollars, amounting, together with interest to August 14, 1891, to twenty-seven thousand seven hundred and thirty-three dollars and ninety-four cents, and is recorded in Philadelphia, in Mortgage Book F. T. W. No. 127, page 358, and

in Delaware county, in Mortgage Book Z No. 2, page 281, under and subject to which this *levari facias* is issued.

9th. All that certain tract or piece of meadow situate in Tinicum, Delaware county, beginning at a stone in Martin's lane, thence along the said lane north twenty-two degrees west twenty-three and fifteen-hundredths perches to a stake, a corner of land belonging to the estate of William Bingham, deceased; thence by the same (partly along a ditch) north sixty-four and one-half degrees east one hundred and seventy-four and forty-two hundredths perches to the middle of Bow creek, passing over a stone which is forty-three and one-half feet from the middle of said creek; thence along the middle of said creek by other land of Edgar N. Black (said creek being the dividing line of Philadelphia and Delaware counties) the several courses thereof twenty-one and seventeen one-hundredths perches; thence by the same land along the middle of a ditch south sixty-two degrees west one hundred and eighty-nine and three one-hundredths perches to the place of beginning, containing twenty-two acres two perches, more or less (being the same tract of land which Joseph Carson, executor of the last will of Catherine Carson and Susanna Carson, deceased, and others, by deed dated December 22, 1875, and recorded in the office for recording deeds, etc., in and for said Delaware county, in Deed Book W No. 3, page 651, granted and conveyed unto the same Edgar N. Black in fee).

No improvements on this property.

On this property there is a mortgage debt of eleven thousand dollars, amounting, together with interest to July 1, 1891, to sixteen thousand six hundred and seven dollars and ninety-six cents. The mortgage bears date January 1, 1876, and is recorded in Delaware county, in Mortgage Book K No. 3, page 223.

Under and subject to which this *levari facias* is issued.

10th. All that certain tract or piece of meadow land and flats situate in the township of Tinicum, Delaware county, beginning at a point in the middle of Tinicum road at a corner of lands of Hannah S. Harper, thence along the middle of said road north sixty-three degrees east forty-seven and ninety-three hundredths perches to a point in the middle line of Kinsey's lane; thence along the middle of said lane south twenty-five degrees east to low-water mark of the Delaware river; thence westward along low-water mark of the Delaware river about sixty-five perches to said land of Hannah S. Harper; thence north eighteen degrees and twenty-five minutes west along the said Hannah S. Harper's ground to the place of beginning, containing inside the river bank forty-four acres and forty-eight square perches of land, and the flats outside the river bank to low-water mark containing about twelve acres.

11th. And also that certain tract of meadow land situate in the township of Tinicum aforesaid, beginning in the middle of Kinsey's lane aforesaid at the corner of lands above described and of estate of Samuel Crothers, deceased, thence along Crothers' ground north sixty-five degrees forty-nine minutes east fifty-eight and forty-nine one-hundredths perches to a point, the line of land of J. C. Andrews; thence along said Andrews' ground south twenty-four

degrees three minutes east fifty-one and seventy-eight hundre-ths perches to the bank of the Delaware river; thence along said bank south seventy-two degrees fifty-one minutes west forty-eight and forty-two hundre-ths to a point; thence still along said bank north thirty-nine degrees thirty-eight minutes west thirteen and twelve one-hundre-ths perches to a point; thence still along said bank north eighty-seven degrees west seven and eighty-six one-hundre-ths perches to the middle of said Kinsey's lane; thence along the middle of said lane north twenty-three degrees fifty minutes west twenty-nine and sixty-two one-hundre-ths perches to the place of beginning, containing (according to a survey made by Benj. H. Smith, May 31, 1876) sixteen acres one hundred and forty-four fifty-three one-hundre-ths perches.

68 12th. And also all the "flats" lying in front of the last-described lot of land between the line of said land of said Andrews and the tract first above described and extending to low-water mark of the River Delaware (being the same premises Nos. 10, 11, 12, which the said James P. Serrill and Emma M., his wife; Susan, George, and Jacob S. Serrill, by indenture dated August 1, 1876, and intended to be forthwith recorded (Deed Book D, No. 4, p. 458) for the consideration therein mentioned, part whereof is intended to be hereby secured, granted and conveyed unto the said Edgar N. Black in fee.)

On this property there is a mortgage debt of six thousand one hundred and eighty dollars and forty-nine cents, amounting, together with interest to August 1st, 1876, to eight thousand two hundred and seventy-five dollars and twelve cents. The mortgage bears date August 1, 1876, and is recorded in Delaware county, in Mortgage Book "R" No. 3, page 581, under and subject to which this *levari facias* is issued.

No improvement on this property.

13th. The interest of said Edgar M. Black, being one undivided third part in and to all that certain tract of land, being part of Hog island, situate in Tinicum township, Delaware county, State of Pennsylvania, beginning at a point at low-water mark of the River Delaware opposite the middle of the lane dividing the premises hereinafter described from that part of that island formerly belonging to Samuel and Isaac Reeves and now owned by Edgar N. Black, thence along said low-water mark of the River Delaware to a stone, a point of land belonging to the United States Government, on which Fort Mifflin stands; thence along said land north eight degrees twenty-five minutes east fifteen hundred and fifty-one feet and thirty-five hundredths of a foot, more or less, to the middle of the back channel; thence along the middle of the said back channel the several courses thereof to the centre of a road (crossing said channel) leading from the mainland to Hog island; thence still along the middle of the said back channel the several courses thereof to the middle of a sluice race; thence along the said sluice race to the middle of the lane first above mentioned; thence along the middle of the said lane to the place of beginning, containing three hundred and fifty acres (but according to a recent survey containing about

three hundred and eighty-two acres, more or less). Being the same premises which by the will of John Black, deceased, as to one-third part thereof, were devised to the said Edgar N. Black in fee and as to the one-third to the said Charles N. Black in fee.

This property is subject to the aforesaid mortgage debt and interest, amounting to sixteen thousand six hundred and seven dollars and ninety-six cents; also to a mortgage debt of ten thousand dollars, amounting, together with interest to October 30, 1891, to fifteen thousand nine hundred and sixty-six dollars and thirty-nine cents. The mortgage bears date October 30, 1876, and is recorded in Delaware county, in Mortgage Book S No. 3, page 129, under and subject to which this *levari facias* is issued.

The improvements on this property consist of a wharf, a large two-story stone and mansard-roof house, a large frame barn and stables, two small frame houses, frame milk-house, large frame kitchen for workman and bake-oven, blacksmith shop, frame barn and corn crib, one-story long low frame building for workman for sleeping, frame slaughter-house and shed, hay scales and shed, artesian well, 450 feet deep to rock, and large tank.

14th. All that tract of meadow land in the township of Tinicum, Delaware county, in the State of Pennsylvania, beginning at the stake in the middle of the river bank, thence along the side of a thirty-three feet road north twenty-five and one-fourth degrees west forty-six perches to a corner of land of Joseph Ash, late of Thomas Serrill; thence along the middle of a ditch, being a line of the same, south sixty-five degrees west fifty-six and two-tenths perches to a corner of land late of George Serrill, deceased; thence along the middle of a ditch, being a line of the said George Serrill's land south twenty-five and three-fourths degrees east fifty-one and eight-tenths perches to the Delaware river; thence along the river bank north seventy-one and one-half degrees east fifty-one and five-tenths perches; thence north twenty and one-fourth degrees west twelve and one-tenth perches, and thence north seventy-one and one-half degrees east three and sixty-five one-hundredths perches to the place of beginning, containing eighteen acres three roods and twenty-eight square perches, more or less, and also all the flats lying in front of the said low-water mark in Delaware river, being same premises which W. D. M. Serrill, and others by deed dated March 28, 1877, recorded, as aforesaid, in Deed Book H No. 4, page 168, granted and conveyed unto Edgar N. Black in fee.

No improvements on this tract.

On this property there is a mortgage debt of ten thousand dollars, amounting, together with interest to November 30, 1891, to sixteen thousand and seven dollars and eighty-nine cents, which is hereinafter recited, under and subject to which this *levari facias* is issued.

69 15th. All that certain tract or piece of land situate, lying, and being in the 24th ward of the city of Philadelphia (formerly Kingsessing), in the county of Philadelphia, bounded and described as follows: Beginning at a point in the middle of the old bed of the back channel of the River Delaware, now banked off and

stopped, a corner of other land of Edgar N. Black, formerly of Pearson Serrill, thence extending north fifty-seven degrees twenty-nine minutes west fifteen and four-tenths perches to a point; thence south thirty-two degrees thirty-one minutes west three perches to a point; thence north thirty-four degrees and fifty-nine minutes west fifty-five and eight-tenths perches to a point; thence north fifty-five degrees seven minutes east five and four-tenths perches; thence north fifty-two degrees thirty-seven minutes east fourteen and eighty-five hundredths perches to a point; thence north thirty-four degrees five minutes west one and nineteen-hundredths perches to the middle of the ditch; thence along the middle of said ditch and along the line of other land now or late of Matthias Powers south fifty-five degrees three minutes west sixty-seven and seven-tenths perches to a point in the land now or late of David B. Kershaw; thence along the middle of a ditch to a line of said Kershaw's land south thirty-three degrees fifty-eight minutes east fifty-eight and seventy-five hundredths perches to the middle of a ditch; thence along the line of said Kershaw's land to the centre of the said back channel, and thence up the middle of said channel the various courses thereof to the place of beginning, containing twenty-six acres of land, more or less (being the same premises which Matthias Powers and wife, by indenture dated December 31, 1863, and recorded at Philadelphia, in Deed Book L. R. B. No. 8, page 148, granted and conveyed unto Edgar N. Black in fee).

The improvements are a hay barrack.

16th. Also all that certain tract or piece of land situate on Carpenter's island, in that part of the city of Philadelphia, 24th ward, formerly called Kingsessing, bounded and described as follows, to wit: Beginning at a stone, the intersection of the division line between lands late of Henry L. Churchman and Thomas Serrill of the newly embanked meadow as laid down in a certain survey made thereof by John Thompson, dated June 2, 1837, and recorded in Deed Book S. H. F. No. 18, page 583, and the line being the middle of the footing ditch and bearing south sixty-seven degrees fifty-seven minutes west, the said division line bearing south thirty-five degrees east, thence along the line of the said footing ditch south sixty-seven degrees fifty-seven minutes west thirty-six and sixty-six hundredths perches to a stone in the middle of said ditch; thence south twenty-five degrees four minutes west to low-water mark in the back channel of the River Delaware; thence along the same to the continuation to the above first-mentioned division line; thence along the same to the place of beginning, containing eight acres fifty-six perches, more or less (being the same tract of land which John J. Henry and wife, by indenture dated August 8, 1866, and recorded in Deed Book L. R. B., 209,471, granted and conveyed unto Edgar N. Black in fee).

On this tract no improvements.

17th. And also all that certain tract or piece of meadow and marsh land situate, lying, and being in Tinicum township, in the county of Delaware, bounded and described, according to a survey and plan thereof made by Benjamin H. Smith, surveyor, February 1, 1872,

as follows: Beginning in the middle of the back channel (separating Martin's bar from Hog island) opposite the mouth of Bow creek, thence extending up the middle of the said Bow creek, on he bed thereof, by the several courses thereof along other land of E. N. Black to a stake or stone bearing north fifty-five degrees twenty minutes east and distant seventy-two feet from a stone in the next-mentioned line, and thence extending south fifty-five degrees twenty minutes west by other land formerly of Joseph Carson, now of the estate of William Alexander Baring Bingham, a minor, three thousand one hundred and eight feet to a stake or stone in the north-eastwardly side of Martin's lane; thence extending along the said side of said lane south twenty-nine degrees and fifty-eight minutes east four hundred and ninety-one and seven-tenths feet to a stake or stone in the meadow or outer bank as established in the year 1872; thence extending still further by the said line to the middle of the back channel; thence down the said channel the several courses thereof to the line of low-water mark in the River Delaware on the outer edge of Martin's bar; thence extending up the River Delaware by the said low-water line to a point in the middle of the back channel first mentioned (separating Martin's bar from Hog island); thence extending up the middle of the said back channel to the place of beginning, containing in all two hundred and thirteen acres twenty-seven and forty-five hundredths perches according to recent surveys made thereof by Benjamin H. Smith, surveyor (being the same premises which by two several indentures were granted and conveyed unto Edgar N. Black in fee, one thereof by Alexander Biddle and Charles Hare Hutchinson, guardians of William Alexander Baring Bingham, a minor, dated February 3, 1873, and recorded in the office for recording deeds in and for Delaware county, in Deed Book H No. 3, page 246, etc., the other thereof by George W. Henderson *et al.*, dated April 14, 1860, and recorded, as aforesaid, in Deed Book G No. 2, page 415).

70 The improvements are two frame barns.

On the three last-described properties (Nos. 15, 16, 17) there is the aforesaid mortgage debt of eighteen thousand three hundred dollars, amounting, together with interest to August 14, 1891, to twenty-seven thousand seven hundred and thirty-three dollars and ninety-four cents.

Under and subject to which this *levari facias* is issued.

All of the above-described premises, situate in Delaware county are also subject to a mortgage dated May 30, 1877, recorded in Delaware county, in Mortgage Book U No. 3, page 445, on which there is due for principal ten thousand dollars and interest to November 30, 1891, six thousand and seven dollars and eighty-nine cents; in all, sixteen thousand and seven dollars and eighty-nine cents.

Under and subject to which this *levari facias* is issued, together with the hereditaments and appurtenances.

NOTE.—The property will be sold in the following order:

Number one (being No. 13 in the writ). An undivided third of the upper part of Hog island, now called Black's island, on the Dela-

ware river, below Fort Mifflin, Delaware county, containing 382 acres, more or less.

This is sold subject to mortgages as above stated, which also includes other parcels, viz., Nos. 8, 9, 10, 11, 12, 14, 17, viz:

$11,000, dated January 1, 1876, Nos. 9, 13.

$10,000, dated October 30, 1876, No. 13.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

Number two (being No. 8 in the writ). The lower part of Hog or Black's island, containing 93 acres, more or less.

This is sold subject to mortgages, as above stated, which also includes other tracts, viz., Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, viz:

$5,000, dated October 1, 1867, No. 8.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

Number three (being No. 17 in the writ). A tract of land known as Martin's bar, on the Delaware river, in Delaware county, which lies next below Hog island, divided from it by the back channel, now banked in, and includes the property, formerly the "Bingham estate," on the northerly side of back channel. The two tracts by a recent survey contained 270 acres 2 roods 28 perches.

This is sold subject to mortgages, as above stated, which includes other tracts, viz., Nos. 8, 9, 10, 11, 12, 13, 14, 15, 18.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

And also a mortgage for $6,000 (reduced to $4,800) on the property formerly the "Bingham estate," dated February 3, 1873, recorded in Mortgage Book R No. 2, page 558, held by the Pennsylvania Company for insurances on lives, etc.

Number four (being Nos. 1 to 7, inclusive, and 15 and 16 in the writ, will be sold together), being a tract of land situate on the Fort Mifflin road leading from Penrose Ferry bridge and the back channel, in the 27th ward, Philadelphia.

They contain by recent surveys 135 acres 2 roods 12 perches. They are sold subject to mortgages, as above stated, which also includes the parcels numbered 8 and 17, viz:

$10,000, dated December 22, 1862, Nos. 1 to 7, inclusive.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

Number five (being Nos. 9 to 12 and 14) will be sold together, being a tract of land situate in Delaware county, adjoining Martin's bar to the west and south, and part thereof fronting on the Delaware river, containing 114 acres, more or less, according to a recent survey. They are sold subject to mortgage, as above stated, which also includes parcels numbered 8, 13, 17, viz:

$11,000, dated January 1, 1876, Nos. 9 and 13.

$6,180.49, dated August 1, 1876, Nos. 10, 11. 12.

$10,000, dated May 30, 1877, Nos. 8 to 14 and 17.

The above-recited incumbrances amount in the aggregate to $75,280.49, together with interest—

71 Together with the hereditaments and appurtenances in your ba-liwick, you cause to be levied as well a certain debt of thirty-one thousand three hundred and forty-one dollars and

eighty cents, lawful money of the United States of America, with the lawful interest thereof from the twelfth day of April, A. D. 1892, and also — dollars and — cents, like money, for costs, which said debts, with interest and costs aforesaid, Mary K. L. Black, a citizen of the State of New York, plaintiff, lately in our circuit court of the United States for the eastern district of Pennsylvania, before the Honorable Marcus W. Acheson, circuit judge, at Philadelphia, to wit, on the twelfth day of April, A. D. 1892, by the consideration of said court recovered, to be levied of the said above-described property, with the appurtenances, by the default of the said defendant in not paying the said debt at the time when the same ought to have been paid, according to the form and effect of an act of assembly of the Commonwealth of Pennsylvania in such case made and provided, and you have those moneys before our judges, at Philadelphia, at our said court there to be held, on the first Monday of November next, to render unto the said plaintiff for the debt, interest, and costs aforesaid, whereof the said defendant is convict, as appears of record, &c., and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 3rd day of October, in the year of our Lord one thousand eight hundred and ninety-two, and in the 117th year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk of the Circuit Court of the United States.

72 Endorsed: No. 1. Oct. sess., 1892. Original No. 191. Oct. sess., 1891. C. C. U. S., E. D. of Pa. Mary K. L. Black *vs.* Mary M. Black, adm'x E. N. Black. *Levari facias.* Real debt, $31,341.80. Int. from Ap. 12, 1892. Att'y, writ, and serv., $30.00; clerk's costs, $15.35; *lev. fac.*, $2.40. Proceedings stayed, costs paid. R. C. McMurtrie, att'y for pl'ff. R. C. McMurtrie.

Marshal's Return.

Proceedings stayed, as appears on face of writ.
So answer—

ALEXANDER P. COLESBERRY,
U. S. Marshal,
Per T. MARPLE, *Deputy.*

Returned November 12, 1892.

SAMUEL BELL, *Clerk, &c.*

73 Circuit Court U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

October Sessions, 1891.
No. 191.

The defendant comes and moves that a rule be granted on the plaintiff to show cause why the sale should not be postponed in the above case and assigns the following reasons therefor:

First. Because the properties are not sold according to the mortgage held by Mary K. L. Black, which provides that there shall be separate and distinct writs issued for the sale of the same.

Second. Because the properties are not properly or sufficiently advertised.

Third. Because the lots for sale are so arranged that a purchaser of one lot would buy it subject to a mortgage on that and other lots.

Fourth. Because the lots for sale are not arranged to bring the best price.

Fifth. Because the number of acres *are* not correctly stated.

Sixth. Because the dates and records of the mortgages are not correctly given.

Seventh. Because the amounts of the mortgages and interest are not correctly stated.

Eighth. Because the sale should be held at a public place and not at the United States marshal's office, third floor, post-office building.

Ninth. Because the properties are so arranged in the bills of advertisement and published notices in the paper as to confuse and mislead a purchaser.

Tenth. Because the properties are so arranged as to preclude purchasers other than those holding the mortgages, greatly
74 to the injury of the right and equity of the defendants, one of whom is a minor.

Eleventh. Because a sale of the properties *are* arranged in the bills of advertisement and published notices in the paper as published would work great and irreparable injury to the right and equity of the defendants, one of whom is a minor.

Twelfth. Because if the property was sold under the said bills of advertisements it would bring nothing like its real value or worth.

MARY M. BLACK.

CITY AND COUNTY OF PHILADELPHIA, *State of Pennsylvania*, } *ss:*

Mary M. Black, administratrix of Edgar N. Black, deceased, being duly affirmed according to law, deposes and says that the facts set forth above are true, to the best of her knowledge, information, and belief.

MARY M. BLACK.

Affirmed and subscribed to before me this second day of November, A. D. 1892.

GEO. W. REED,
[SEAL.] *Notary Public.*

(Endorsed:) Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Circuit court U. S., E. D. of Penn. Oct. sess., 1891. No. 191. Rule to postpone sale. Enter rule on plaintiff to show cause why the sale should be postponed in the above case, returnable Tuesday, Nov. 15, 1892, at 10 a. m., all proceedings to stay in the meantime. Filed Nov. 3, 1892. Wm. W. Ker, att'y *pro* defendant.

75 *Order of Court.*

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

THURSDAY, *November 3rd*, 1892.

The court is opened pursuant to adjournment.
Present: Hon. George M. Dallas, circuit judge.

BLACK *vs.* BLACK. } No. 191. Oct. Sess., 1891.

And now, to wit, this 3rd day of November, A. D. 1892, a rule is entered on plaintiff to show cause why the sale should not be postponed in the above case, returnable Tuesday, November 15th, 1892, at 10 a. m., all proceedings to stay in the meantime.

76 C. C., 3d Circuit, E. D. Pa.

MARY K. L. BLACK *vs.* MARY M. BLACK. } Oct. Sess., 1891. No. 191.

The order for rule to show cause why the sale should not be postponed in above case having been made, upon the assurance of counsel applying therefor that notice of the application had been given to plaintiff's counsel, and counsel for plaintiff now appearing & stating that no such notice was received by him, so much of said order as directs a stay of proceedings is hereby revoked as having been improvidently made.
Nov. 3d, 1892.

GEO. M. DALLAS.

Endorsed: 191. Oct. sess., 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black, admi'x. Order revoking as much of order of court of Nov. 3, 1892, as directed a stay of proceedings, &c. Filed Nov. 3, 1892. Samuel Bell, clerk. M.

77 C. C. U. S., E. D. of Pa.

MARY K. L. BLACK } (Orig'l 191, Oct., '91.)
v. (L. F. 1, Oct., '92.)
MARY M. BLACK, Adm'x of Edgar N. Black.

Issue writ of *alias levari facias*, returnable to the next return day.
R. C. McMURTRIE, *For Pl'ff.*

Jan'y, 1892.

Cl'k C. C. U. S., E. D. Pa.

Endorsed: No. 1. Oct. sess., 1892. Black *v.* Black. C. C. U. S., E. D. Pa. Præcipe *als. L. F.* Filed Jan. 9, 1893. Samuel Bell, clerk. M. McMurtrie.

78 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania. }

To the United States marshal for the eastern district of Pennsylvania:

We command you, as before we did, that without any other writ from us of the lands and tenements which were of Edgar N. Black in his lifetime, viz:

1st. All that certain lot or piece of meadow ground situate on State or Province island, in the 24th ward of the city of Philadelphia (formerly in the township of Kingsessing), bounded and described, according to a survey made thereof by Edward Lynch, surveyor, June 13, 1802, as follows, to wit: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill river, thence by the middle of a ditch dividing this from land released to Elizabeth Taylor south thirty-nine degrees thirty minutes east fifty and one-tenth perches to the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of said bank the several courses thereof forty-nine and one-tenth perches or thereabout to a stake by the side of Eagle creek; thence along the same several courses thereof seventy-three seven-tenths perches to a stake in the middle of the aforesaid road or lane; thence along the middle thereof north forty-seven degrees forty-five minutes east twenty-eight and one-tenth perches to the place of beginning, containing fifteen acres and five perches, exclusive of the creek, and also the cripple and marsh land which lieth between the said described embanked lot and low-water mark on Delaware river and Eagle creek.

2d. Also all that lot or piece of ground (being the northeasternmost part of four contiguous lots or pieces of ground marked on a plan of said State or Province island Nos. 16, 17, 18, and 19) bounded and described, according to the aforementioned survey, as follows, viz: Beginning at a stake in the middle of the road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill, thence extending along the middle of a ditch by lot No. 15, now or late belonging to Edward Sprogell, south forty-two degrees east

forty-six nine-tenths perches to a stake in the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of the said bank south thirty-eight three-fourths degrees west twenty-eight perches to a stake and south fifty and one-half degrees west eighteen and three-tenths perches to a stake; thence along the middle of another ditch dividing this from the remainder of the aforesaid four contiguous lots released to the said Edward Sprogell north thirty-nine degrees thirty minutes west fifty and one tenth perches to a stake in the middle of said road; thence extending by the same north forty-seven and one-fourth degrees east forty-three and seven-tenths perches to the place of beginning, containing thirteen acres and one hundred and forty perches, together with the cripple and marsh land which lieth between the said last-described embanked land and low-water mark on Delaware river.

3d. Also all that lot and piece of ground or meadow situate in the 24th ward aforesaid (formerly the township of Kingsessing), being part of State or Province island aforesaid, and the lot marked in the general plan thereof No. 15, beginning at a stake near a large old stump standing on the edge of the cripple and a small distance south of the Hospital wharf, thence by the said cripple south forty degrees west twenty-one and six-tenths perches to a stake set in the bank in the line of lot No. 16, sold to Charles Miller; thence by said lots north forty degrees thirty minutes west forty-six perches to a stake set in the middle of the road leading southwestwardly from the Hospital road through the marsh; thence by the said road north forty-seven degrees forty-five minutes east thirty-two perches to a stake set for a corner in the middle of the Hospital road; thence by the same road and the line of the Hospital lot south twenty-eight degrees thirty minutes east forty-five perches to the first-mentioned stake and place of beginning, containing by a resurvey seven acres and one-fourth and twenty-one perches, exclusive of the flat or guard along the river; and also all the cripple and marsh land which lieth between the above-described embanked lot and the low-water mark on the Delaware river.

4th. Also all that lot or piece of ground situate on the said State or Province island, in the 24th ward aforesaid, marked on the aforesaid plan of said island No. 23, bounded and being as follows, viz: Beginning at a stake in the middle of the road leading from the (late) pest-house to the ferry on Schuylkill, thence extending by lot No. 22 south forty-seven degrees forty-five minutes west fifty-nine perches and seven-tenths to a post; thence by lot No. 21 north forty-two degrees fifteen minutes west twenty perches to a post; thence by lot No. 24 north forty-seven degrees forty-five minutes east sixty-four and four-tenths perches to a stake in the middle of the aforesaid road; thence along the middle thereof south twenty-eight degrees thirty minutes east twenty and five-tenths perches to the place of beginning, containing seven acres and one hundred and twenty perches of land, be the same more or less.

5th. Also a strip of land, three-tenths of a perch in width, extending along the boundary line of the tracts or parcels of land above de-

scribed, No. 1 and 2, but which is now included in and forms part of the tracts or parcels described as No. 1.

79 6th. Also all the cripple marsh meadow land and alluvion lying adjacent to the aforedescribed parcels between the present bank and the low-water mark of the inner channel of the River Delaware, in front thereof, extending from a line opposite to the bank across the ditch or drain called Eagle creek along said low-water mark of the said channel of the River Delaware to the boundary line of the property now owned by the United States, at present in the tenancy and occupation of the said Edgar N. Black, as their lessees, being the same premises which William Jacob Wonderly and Phœbe Suplee, his wife, by a certain indenture, dated February 19, 1859, recorded at Philadelphia, in Deed Book A. D. B. No. 51, page 459, granted and conveyed unto the said Edgar N. Black in fee.

The improvements on the six tracts of ground above described are a three-story frame house, a small frame house, hay scales, hay barrack.

7th. And also all that certain lot or piece of ground situated in the 24th ward aforesaid (formerly the township of Kingsessing) bounded and described as follows: Beginning at a stake on the top of the bank in direct continuation of the line of the middle of Eagle creek, thence up the middle of said creek by other land of Black north forty-seven degrees nineteen minutes west twelve perches and eleven hundredths and north sixty-three degrees west five perches and two hundredths to a stake opposite the middle of a new ditch, made for the dividing line between this and other ground, formerly of Pearson Serrill; thence along middle of said ditch south forty-eight degrees west forty-four perches and five hundredths to the middle of a ditch dividing this from land of Matthias Powers; thence along the line of said Powers' land the six following courses and distances, viz., along the middle of said ditch south thirty-four degrees five minutes east seventeen perches to a stake in the top of the old bank; thence along the top of the bank south fifty-two degrees thirty-seven minutes west fourteen perches and eighty-five hundredths to a stake and south fifty-five degrees seven minutes west five perches and four-tenths to a stake near a buttonwood, thence across the meadow south thirty-four degrees fifty-nine minutes east fifty-five perches and eight-tenths to a stake in the bank, thence along the bank north thirty-two degrees thirty-one minutes east three perches, thence across the flats south fifty-seven degrees and twenty-nine minutes east fifteen perches and four-tenths to the line of low-water mark in the back channel of the River Delaware, thence along the said low-water mark or line north twenty-eight degrees four minutes east sixty-five perches and fifty-six hundredths and north thirty-eight degrees and fifty-four minutes east sixteen perches and six-tenths to a stake, thence across the flats by other land of said Black north fifty-three degrees twenty-nine minutes west forty-three perches and eight-tenths to the stake in the bank and place of beginning, containing in the said boundaries thirty-one acres and ninety-four perches and ninety-four hundredths, more or less, together with all the land, being about one hundred perches additional, lying directly in front

of the said described tract between said low-water line and the middle of the said back channel of the Delaware river, being the same premises which Isaac S. Serrill and others, by indenture bearing date the twenty-fifth day of September, anno Domini eighteen hundred and sixty-two, duly executed and acknowledged and intended to be forthwith recorded, according to law, granted and conveyed unto the said Edgar N. Black in fee.

There are no improvements on this tract.

On the above-described properties there is a mortgage debt of ten thousand dollars, amounting, together with interest to November 10, 1891, to fifteen thousand three hundred and forty-one dollars and nineteen cents. The mortgage bears date December 22, 1862, and is recorded at Philadelphia, in Mortgage Book A. C. H. No. 41, page 508, under and subject to which this *levari facias* is issued.

8th. All those eight several contiguous tract- or parcels of land situate, lying, and being on Hog island, in the River Delaware, in the county of Delaware, in the State of Pennsylvania, *on* which are marked upon a plan of survey made by Elijah Porch, dated October 10, 1816, as Nos. 1, 2, 3, 6, 7, 8, 9, 10, and together bounded and described as follows:

Beginning at a post in the cross-bank dividing the said lands from lands now of John Black and formerly of Samuel Whitall and corner of lots marked on said plan Nos. 3, 4, thence by a line dividing the said lots Nos. 3, 4 and 3, 5 and 8, 11 north seventy-nine degrees east one chain and seventy-five links; thence by the line of lot No. 5 five chains and fifty links to a point; thence north sixty degrees east four chains and seventy links to the line or ditch dividing lots marked on said plan Nos. 3, 8; thence south seventy-eight degrees west five chains and ninety links to the bank of the back channel; thence to the middle of the back channel, which divides the island from the mainland; thence in a southerly direction along the centre of the said back channel to the low-water mark in the River Delaware, and thence eastwardly by the line of the low-water mark along and around the shore of the said island to a point opposite to a post by the side of the bank on the southerly side of the island and corner of lots marked on said plan Nos. 1 and 2; also a corner of lands now of John Black, late of Samuel Whitall aforesaid; thence along the line of the said cross-bank, the boundary or division line of the lands thereby granted and those of John Black, north fifteen minutes west to the place of beginning, and containing within the banks, by estimation and according to said survey, ninety-three acres, be the same more or less, bounded on the
80 north by the lots marked on the said plan Nos. 4, 5, and 11, on the west and south by the low-water mark of the River Delaware, and east by lands formerly of Samuel Whitall, and now the property of John Black, being the same premises which Isaac Reeves and Samuel M. Reeves and Hannah W., his wife, by indenture dated April 11, 1857, and recorded in the office for recording deeds, etc., in and for Delaware county, in Deed Book D No. 2, page 638, granted and conveyed unto the said Edgar N. Black in fee.

The improvements consist of two and one-half story frame house and barn; also a three-story frame house and barn.

On this property there is a mortgage debt of five thousand dollars, amounting, together with interest to November 10, 1891, to seven thousand six hundred and seventy dollars and fifty-nine cents. The mortgage bears date October 1, 1867, and is recorded in Delaware county, in Mortgage Book X, page 469; also a mortgage debt of eighteen thousand three hundred dollars, amounting, together with interest to August 14, 1891, to twenty-seven thousand seven hundred and thirty-three dollars and ninety-four cents, and is recorded in Philadelphia, in Mortgage Book F. T. W. No. 127, page 358, and in Delaware county, in Mortgage Book Z No. 2, page 281, under and subject to which this *levari facias* is issued.

9th. All that certain tract or piece of meadow situate in Tinicum, Delaware county, beginning at a stone in Martin's lane, thence along the said lane north twenty-two degrees west twenty-three and fifteen-hundredths perches to a stake, a corner of land belonging to the estate of William Bingham, deceased; thence by the same (partly along a ditch) north sixty-four and one-half degrees east one hundred and seventy-four and forty-two hundredths perches to the middle of Bow creek, passing over a stone which is forty-three and one-half feet from the middle of said creek; thence along the middle of said creek by other land of Edgar N. Black (said creek being the dividing line of Philadelphia and Delaware counties) the several courses thereof twenty-one and seventeen one-hundredths perches; thence by the same land along the middle of a ditch south sixty-two degrees west one hundred and eighty-nine and three one-hundredths perches to the place of beginning, containing twenty-two acres two perches, more or less (being the same tract of land which Joseph Carson, executor of the last will of Catherine Carson and Susanna Carson, deceased, and others, by deed dated December 22, 1875, and recorded in the office for recording deeds, etc., in and for said Delaware county, in Deed Book W No. 3, page 651, granted and conveyed unto the same Edgar N. Black in fee).

No improvements on this property.

On this property there is a mortgage debt of eleven thousand dollars, amounting, together with interest to July 1, 1891, to sixteen thousand six hundred and seven dollars and ninety-six cents. The mortgage bears date January 1, 1876, and is recorded in Delaware county, in Mortgage Book K No. 3, page 223.

Under and subject to which this *levari facias* is issued.

10th. All that certain tract or piece of meadow land and flats situate in the township of Tinicum, Delaware county, beginning at a point in the middle of Tinicum road at a corner of lands of Hannah S. Harper, thence along the middle of said road north sixty-three degrees east forty-seven and ninety-three hundredths perches to a point in the middle line of Kinsey's lane; thence along the middle of said lane south twenty-five degrees east to low-water mark of the Delaware river; thence westward along low-water mark of the Delaware river about sixty-five perches to said land of Hannah S. Harper; thence north eighteen degrees and twenty-five minutes west along

the said Hannah S. Harper's ground to the place of beginning, containing inside the river bank forty-four acres and forty-eight square perches of land, and the flats outside the river bank to low-water mark containing about twelve acres.

11th. And also that certain tract of meadow land situate in the township of Tinicum aforesaid, beginning in the middle of Kinsey's lane aforesaid at the corner of lands above described and of estate of Samuel Crothers, deceased, thence along Crothers' ground north sixty-five degrees forty-nine minutes east fifty-eight and forty-nine one-hundre-ths perches to a point, the line of land of J. C. Andrews; thence along said Andrews' ground south twenty-four degrees three minutes east fifty-one and seventy-eight hundre-ths perches to the bank of the Delaware river; thence along said bank south seventy-two degrees fifty-one minutes west forty-eight and forty-two hundre-ths to a point; thence still along said bank north thirty-nine degrees thirty-eight minutes west thirteen and twelve one-hundre-ths perches to a point; thence still along said bank north eighty-seven degrees west seven and eighty-six one-hundre-ths perches to the middle of said Kinsey's lane; thence along the middle of said lane north twenty-three degrees fifty minutes west twenty-nine and sixty-two one-hundre-ths perches to the place of beginning, containing (according to a survey made by Benj. H. Smith, May 31, 1876) sixteen acres one hundred and forty-four fifty-three one-hundre-ths perches.

81 12th. And also all the "flats" lying in front of the last-described lot of land between the line of said land of said Andrews and the tract first above described and extending to low-water mark of the River Delaware (being the same premises, Nos. 10, 11, 12, which the said James P. Serrill and Emma M., his wife; Susan, George, and Jacob S. Serrill, by indenture dated August 1, 1876, and intended to be forthwith recorded (Deed Book D No. 4, p. 458), for the consideration therein mentioned, part whereof is intended to be hereby secured, granted and conveyed unto the said Edgar N. Black in fee.)

On this property there is a mortgage debt of six thousand one hundred and eighty dollars and forty-nine cents, amounting, together with interest to August 1, 1876, to eight thousand two hundred and seventy-five dollars and twelve cents. The mortgage bears date August 1, 1876, and is recorded in Delaware county, in Mortgage Book "R" No. 3, page 581, under and subject to which this *levari facias* is issued.

No improvement on this property.

13th. The interest of said Edgar M. Black, being one undivided third part in and to all that certain tract of land, being part of Hog island, situate in Tinicum township, Delaware county, State of Pennsylvania, beginning at a point at low-water mark of the River Delaware opposite the middle of the lane dividing the premises hereinafter described from that part of that island formerly belonging to Samuel and Isaac Reeves and now owned by Edgar N. Black, thence along said low-water mark of the River Delaware to a stone, a point of land belonging to the United States Government, on which

Fort Mifflin stands; thence along said land north eight degrees twenty-five minutes east fifteen hundred and fifty-one feet and thirty-five hundredths of a foot, more or less, to the middle of the back channel; thence along the middle of the said back channel the several courses thereof to the centre of a road (crossing said channel) leading from the mainland to Hog island; thence still along the middle of the said back channel the several courses thereof to the middle of a sluice race; thence along the said sluice race to the middle of the lane first above mentioned; thence along the middle of the said lane to the place of beginning, containing three hundred and fifty acres (but according to a recent survey containing about three hundred and eighty-two acres, more or less), being the same premises which by the will of John Black, deceased, as to one-third part thereof, were devised to the said Edgar N. Black in fee and as to the one-third to the said Charles N. Black in fee.

This property is subject to the aforesaid mortgage debt and interest, amounting to sixteen thousand six hundred and seven dollars and ninety-six cents; also to a mortgage debt of ten thousand dollars, amounting, together with interest to October 30, 1891, to fifteen thousand nine hundred and sixty-six dollars and thirty-nine cents. The mortgage bears date October 30, 1876, and is recorded in Delaware county, in Mortgage Book S No. 3, page 129, under and subject to which this *levari facias* is issued.

The improvements on this property consist of a wharf, a large two-story stone and mansard-roof house, a large frame barn and stables, two small frame houses, frame milk-house, large frame kitchen for workman and bake-oven, blacksmith shop, frame barn and corn crib, one-story long low frame building for workman for sleeping, frame slaughter-house and shed, hay scales and shed, artesian well, 450 feet deep to rock, and large tank.

14th. All that tract of meadow land in the township of Tinicum, Delaware county, in the State of Pennsylvania, beginning at the stake in the middle of the river bank, thence along the side of a thirty-three feet road north twenty-five and one-fourth degrees west forty-six perches to a corner of land of Joseph Ash, late of Thomas Serrill; thence along the middle of a ditch, being a line of the same, south sixty-five degrees west fifty-six and two-tenths perches to a corner of land late of George Serrill, deceased; thence along the middle of a ditch, being a line of the said George Serrill's land south twenty-five and three-fourths degrees east fifty-one and eight-tenths perches to the Delaware river; thence along the river bank north seventy-one and one-half degrees east fifty-one and five-tenths perches; thence north twenty and one-fourth degrees west twelve and one-tenth perches, and thence north seventy-one and one-half degrees east three and sixty-five one-hundredths perches to the place of beginning, containing eighteen acres three roods and twenty-eight square perches, more or less, and also all the flats lying in front of the said low-water mark in Delaware river, being same premises which W. D. M. Serrill and others, by deed dated March 28, 1877, recorded, as aforesaid, in Deed Book H No. 4, page 168, granted and conveyed unto Edgar N. Black in fee.

No improvements on this tract.

On this property there is a mortgage debt of ten thousand dollars, amounting, together with interest to November 30, 1891, to sixteen thousand and seven dollars and eighty-nine cents, which is hereinafter recited, under and subject to which this *levari facias* is issued.

82 15th. All that certain tract or piece of land situate, lying, and being in the 24th ward of the city of Philadelphia (formerly Kingsessing), in the county of Philadelphia, bounded and described as follows: Beginning at a point in the middle of the old bed of the back channel of the River Delaware, now banked off and stopped, a corner of other land of Edgar N. Black, formerly of Pearson Serrill, thence extending north fifty-seven degrees twenty-nine minutes west fifteen and four-tenths perches to a point; thence south thirty-two degrees thirty-one minutes west three perches to a point; thence north thirty-four degrees and fifty-nine minutes west fifty-five and eight-tenths perches to a point; thence north fifty-five degrees seven minutes east five and four-tenths perches; thence north fifty-two degrees thirty-seven minutes east fourteen and eighty-five hundredths perches to a point; thence north thirty-four degrees five minutes west one and nineteen-hundredths perches to the middle of the ditch; thence along the middle of said ditch and along the line of other land now or late of Matthias Powers south fifty-five degrees three minutes west sixty-seven and seven-tenths perches to a point in the land now or late of David B. Kershaw; thence along the middle of a ditch to a line of said Kershaw's land south thirty-three degrees fifty-eight minutes east fifty-eight and seventy-five hundredths perches to the middle of a ditch; thence along the line of said Kershaw's land to the centre of the said back channel, and thence up the middle of said channel the various courses thereof to the place of beginning, containing twenty-six acres of land, more or less (being the same premises which Matthias Powers and wife, by indenture dated December 31, 1863, and recorded at Philadelphia, in Deed Book L. R. B. No. 8, page 148, granted and conveyed unto Edgar N. Black in fee).

The improvements are a hay barrack.

16th. Also all that certain tract or piece of land situate on Carpenter's island, in that part of the city of Philadelphia, 24th ward, formerly called Kingsessing, bounded and described as follows, to wit: Beginning at a stone, the intersection of the division line between lands late of Henry L. Churchman and Thomas Serrill of the newly embanked meadow as laid down in a certain survey made thereof by John Thompson, dated June 2, 1837, and recorded in Deed Book S. H. F. No. 18, page 583, and the line being the middle of the footing ditch and bearing south sixty-seven degrees fifty-seven minutes west, the said division line bearing south thirty-five degrees east, thence along the line of the said footing ditch south sixty-seven degrees fifty-seven minutes west thirty-six and sixty-six hundredths perches to a stone in the middle of said ditch; thence south twenty-five degrees four minutes west to low-water mark in the back channel of the River Delaware; thence along the same to the continu-

ation of the above first-mentioned division line; thence along the same to the place of beginning, containing eight acres fifty-six perches, more or less (being the same tract of land which John J. Henry and wife, by indenture dated August 8, 1866, and recorded in Deed Book L. R. B. 209, 471, granted and conveyed unto Edgar N. Black in fee).

On this tract no improvements.

17th. And also all that certain tract or piece of meadow and marsh land situate, lying, and being in Tinicum township, in the county of Delaware, bounded and described, according to a survey and plan thereof made by Benjamin H. Smith, surveyor, February 1, 1872, as follows: Beginning in the middle of the back channel (separating Martin's bar from Hog island) opposite the mouth of Bow creek, thence extending up the middle of the said Bow creek, on the bed thereof, by the several courses thereof along other land of E. N. Black to a stake or stone bearing north fifty-five degrees twenty minutes east and distant seventy-two feet from a stone in the next-mentioned line, and thence extending south fifty-five degrees twenty minutes west by other land formerly of Joseph Carson, now of the estate of William Alexander Baring Bingham, a minor, three thousand one hundred and eight feet to a stake or stone in the northeastwardly side of Martin's lane; thence extending along the said side of said lane south twenty-nine degrees and fifty-eight minutes east four hundred and ninety-one and seven-tenths feet to a stake or stone in the meadow or outer bank as established in the year 1872; thence extending still further by the said line to the middle of the back channel; thence down the said channel the several courses thereof to the line of low-water mark in the River Delaware on the outer edge of Martin's bar; thence extending up the River Delaware by the said low-water line to a point in the middle of the back channel first mentioned (separating Martin's bar from Hog island); thence extending up the middle of the said back channel to the place of beginning, containing in all two hundred and thirteen acres twenty-seven and forty-five hundredths perches according to recent surveys made thereof by Benjamin H. Smith, surveyor (being the same premises which by two several indentures were granted and conveyed unto Edgar N. Black in fee, one thereof by Alexander Biddle and Charles Hare Hutchinson, guardians of William Alexander Baring Bingham, a minor, dated February 3, 1873, and recorded in the office for recording deeds in and for Delaware county, in Deed Book H No. 3, page 246, etc., the other thereof by George W. Henderson *et al.*, dated April 14, 1860, and recorded, as aforesaid, in Deed Book G No. 2, page 415).

83 The improvements are two frame barns.

On the three last-described properties (Nos. 15, 16, 17) there is the aforesaid mortgage debt of eighteen thousand three hundred dollars, amounting, together with interest to August 14, 1891, to twenty-seven thousand seven hundred and thirty-three dollars and ninety-four cents.

Under and subject to which this *levari facias* is issued.

All of the above-described premises, situate in Delaware county

are also subject to a mortgage dated May 30, 1877, recorded in Delaware county, in Mortgage Book U No. 3, page 445, on which there is due for principal ten thousand dollars and interest to November 30, 1891, six thousand and seven dollars and eighty-nine cents; in all, sixteen thousand and seven dollars and eighty-nine cents.

Under and subject to which this *levari facias* is issued, together with the hereditaments and appurtenances.

NOTE.—The property will be sold in the following order:

Number one (being No. 13 in the writ). An undivided third of the upper part of Hog island, now called Black's island, on the Delaware river, below Fort Mifflin, Delaware county, containing 382 acres, more or less.

This is sold subject to mortgages as above stated, which also includes other parcels, viz., Nos. 8, 9, 10, 11, 12, 14, 17, viz:

$11,000, dated January 1, 1876, Nos. 9, 13.

$10,000, dated October 30, 1876, No. 13.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

Number two (being No. 8 in the writ). The lower part of Hog or Black's island, containing 93 acres, more or less.

This is sold subject to mortgages, as above stated, which also includes other tracts, viz., Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, viz:

$5,000, dated October 1, 1867, No. 8.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

Number three (being No. 17 in the writ). A tract of land known as Martin's bar, on the Delaware river, in Delaware county, which lies next below Hog island, divided from it by the back channel, now banked in, and includes the property, formerly the "Bingham estate," on the northerly side of back channel. The two tracts by a recent survey contained 270 acres 2 roods 28 perches.

This is sold subject to mortgages, as above stated, which includes other tracts, viz., Nos. 8, 9, 10, 11, 12, 13, 14, 15, 18.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

And also a mortgage for $6,000 (reduced to $4,800) on the property formerly the "Bingham estate," dated February 3, 1873, recorded in Mortgage Book R No. 2, page 558, held by the Pennsylvania Company for insurances on lives, etc.

Number four (being Nos. 1 to 7, inclusive, and 15 and 16 in the writ, will be sold together), being a tract of land situate on the Fort Mifflin road leading from Penrose Ferry bridge and the back channel, in the 27th ward, Philadelphia.

They contain by recent surveys 135 acres 2 roods 12 perches. They are sold subject to mortgages, as above stated, which also includes the parcels numbered 8 and 17, viz:

$10,000, dated December 22, 1862, Nos. 1 to 7, inclusive.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

Number five (being Nos. 9 to 12 and 14) will be sold together, being a tract of land situate in Delaware county, adjoining Martin's bar to the west and south, and part thereof fronting on the Delaware river, containing 114 acres, more or less, according to a recent

survey. They are sold subject to mortgage, as above stated, which also includes parcels numbered 8, 13, 17, viz:

$11,000, dated January 1, 1876, Nos. 9 and 13.

$6,180.49, dated August 1, 1876, Nos. 10, 11, 12.

$10,000, dated May 30, 1877, Nos. 8 to 14 and 17.

The above-recited incumbrances amount in the aggregate to $75,280.49, together with interest—

84 Together with all the hereditaments and appurtenances in your bailiwick, you cause to be levied as well a certain — of thirty-one thousand three hundred and forty-one dollars and eighty cents, lawful money of the United States of America, with the laeful interest thereof from the twelfth day of April, A. D. 1892, as also — dollars and — cents, like money, for costs, which said debt, with interest and costs as aforesaid, Mary K. L. Black, a citizen of the State of New York, plaintiff, lately in our circuit court of the United States for the eastern district of Pennsylvania, before the Honorable Marcus W. Acheson, circuit judge, at Philadelphia, to wit, on the twelfth day of April, A. D. 1892, by the consideration of said court recovered, to be levied of the said above-described property, with the appurtenances, by the default of the said defendant in not paying the said debt at the time when the same ought to have been paid, according to the form and effect of an act of assembly of the Commonwealth of Pennsylvania in such case made and provided, and you have those moneys before our judges, at Philadelphia, at our said court there to be held, on the first Monday of February next, to render unto the said plaintiff for the debt, interest, and costs aforesaid, whereof the said defendant is convict, as appears of record, &c., and have you then and there this writ.

85 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-two, and in the 117th year of the Independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk of the Circuit Court of the United States.

(*Marshal's Return.*)

The marshal will stay proceedings under within writ.

R. C. McMURTRIE,
Per JNO. ROGERS.

2, 6, '93.

Proceedings stayed as appears above.
So answers — ALEX. P. COLESBERRY,
U. S. Marshal,
Per THOS. MARPLE, *Deputy.*

(Endorsed:) No. 1. Oct. sess., 1892. Original, No. 191. Oct. sess., 1891. C. C. U. S., E. D. Pa. Mary K. L. Black *v.* Mary M. Black, adm'x of Edn. N. Black. *Als. levari facias.* Read debt,

$31,341.80. Interest from April 12, '92. Att'y, W., and serv., 30.; clerk's costs, $15.35; *lev. fac.*, 2.40; *als. fac.*, 2.40. R. C. McMurtrie. Filed Feb. 6, 1893.

86 C. C. of the U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	Oct. Sess., 1891. No. 191.

Enter my appearance for defendant in above case.

F. CARROLL BREWSTER,
Per FRANCIS TRACY TOBIN.

Saturday, January 21st, 1893.

To Samuel Bell, Esq., clerk C. C. of the U. S., E. D. of Pennsylvania.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. C. C. of the U. S., E. D. of Penn. Oct. sess., 1891. No. 191. Appearance of F. Carroll Brewster. Filed Jan. 21, 1893. Samuel Bell, clerk. M. F. Carroll Brewster.

87 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	October Sessions, 1891. No. 191.

Mary M. Black, being duly affirmed according to law, deposes and says that she is the defendant in the above case and administratrix of Edgar N. Black, deceased.

That in due season deponent made a motion to quash the writ in this case because the court had no jurisdiction, and at the time of the trial of the said case the same objection to the jurisdiction of the said court was renewed.

The court on both of said occasions decided against deponent.

That judgment was entered on the 26th day of April, A. D. 1892, for the sum of $31,341.80 in favor of plaintiff.

That an *alias levari facias* has been issued for the sale of the premises formerly belonging to the deponent's husband and now belonging to his heirs.

That the said property is very valuable, and if the same
88 be sold at the marshal's sale great and irreparable injury will be inflicted upon deponent and the said heirs of the said Edgar N. Black, deceased, one of whom is yet a minor.

That said *alias levari facias* is returnable to the 1st Monday of February next (1893), and bills advertising the said property are now posted.

That this appeal is not taken for the purpose of delay.

MARY M. BLACK.

Affirmed and subscribed to before me this 24th day of January, A. D. 1893.

[SEAL.] GEO. W. REED,
Notary Public.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Affidavit of Mary M. Black for writ of error. Filed Jan. 24, 1893. Samuel Bell, clerk. M. Francis Tracy Tobin. F. Carroll Brewster.

89 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

MARY K. L. BLACK
vs.
MARY M. BLACK, Adm'x, &c., } No. 191. Oct. Sess., 1891.

The above-named defendant, Mary M. Black, conceiving herself aggrieved by the final judgment entered on April 12th, 1892, in the above-entitled proceeding, does hereby pray for a writ of error to the Supreme Court of the United States, and that a transcript of the record of proceedings and papers upon which such final judgment was made, duly authenticated, may be sent to the said Supreme Court of the United States.

FRANCIS TRACY TOBIN,
F. CARROLL BREWSTER,
Att'ys pro Defendant.

To Samuel Bell, Esq., clerk C. C. U. S., E. D. of Penn.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Præcipe for writ of error. Filed Jan. 24, 1893. Samuel Bell, clerk. M. Francis Tracy Tobin, F. Carroll Brewster, att'ys *pro* defendant.

90 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

October Sessions, 1891.
No. 191.

To the honorable the judges of the circuit court of the United States for the 3rd circuit:

The petition of Mary M. Black, administratrix of Edgar N. Black, deceased, respectfully shows that on the 1st day of March, A. D. 1892, a decree was entered by the circuit court of the United States for the eastern district of Pennsylvania against the defendant, discharging a motion and rule against the plaintiff to show cause why the *scire facias* in the above case should not be quashed for the reasons assigned therefore placed on file, amongst which one of said reasons was to the point that this court had no jurisdiction of said case, whereby your petitioner is aggrieved, and your petitioner herewith filed her assignments of errors; and your petitioner showing that the jurisdiction of the said circuit court of the United States for the eastern district of Pennsylvania to make any decree
91 in the case having been at issue and judgment entered on April 26th, A. D. 1892, for $31,341.80, in accordance with the statutes in such case made and provided, your petitioner comes into your honorable court and prays that an appeal may be allowed to be taken from the decree so entered to the Supreme Court of the United States, and that the honorable the judge of the said circuit court will certify to the Supreme Court of the United States the question of jurisdiction arising in said case.

And your petitioner will ever so pray.

MARY M. BLACK.
MARY M. BLACK.

Affirmed and subscribed to before me this 24th day of January, A. D. 1893.

[SEAL.] GEO. W. REED,
Notary Public.

Endorsed: Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. October sessions, 1891. C. C. U. S., E. D. of Penn. No. 191. Petition of Mary M. Black for allowance of appeal to the Supreme Court of the United States. Filed Jan. 25, 1893. Samuel Bell, clerk. M. Francis Tracy Tobin, F. Carroll Brewster, att'ys for defendant.

92 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

MARY K. L. BLACK
vs.
MARY M. BLACK, Adm'x, &c. } No. 191. Oct. Sess., 1891.

And now, January 30, 1893, upon motion of counsel for defendant, and it appearing that the jurisdiction of this court is in issue, the said question of jurisdiction alone is hereby certified to the Supreme Court for decision, to wit: The plaintiff sued out a writ of *scire facias* on a mortgage on lands situate within this circuit, viz., within the counties of Philadelphia and Delaware, in the State of Pennsylvania, and a question of the jurisdiction of this court was raised in the cause, viz., whether the circuit court of the United States had jurisdiction to enforce a mortgage by that form of proceeding, the land being within the circuit and the plaintiff being a citizen of New York and the defendant a citizen of Pennsylvania, the defendant contending that the remedy was by the act of 1705 confined to the courts of the counties where the lands lie.

GEO. M. DALLAS,
Cir. Judge.

True copy, certified from the record.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk Cir. Ct. U. S., E. D. of Pa.

[Endorsed:] 191. Oct. sess., 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black, adm'x, &c. Certificate as to question of jurisdiction. Filed Jan. 30, 1893. Samuel Bell, clerk. M.

93 AN ACT

To establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes.

SECTION 1. Be it enacted, &c., That there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, in each circuit an additional circuit judge, who shall have the same qualifications, and shall have the same power and jurisdiction therein that the circuit judges of the United States, within their respective circuits, now have under existing laws, and who shall be entitled to the same compensation as the circuit judges of the United States in their respective circuits now have.

Additional circuit judge.

Power and compensation.

SEC. 2. That there is hereby created in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record with appellate jurisdiction, as is hereafter limited and established. Such court shall prescribe the form and style of its seal, and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction as shall be conferred by law. It shall have the appointment of the marshal of the court with the same duties and powers under the regulations of the court as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. The court shall also appoint a clerk, who shall perform and exercise the same duties and powers in regard to all matters within its jurisdiction as are now exer-

94 cised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the marshal of the court shall be $2,500 a year, and the salary of the clerk of the court shall be $3,000 a year, to be paid in equal proportions quarterly. The costs and fees in the Supreme Court now provided for by law shall be costs and fees in the circuit courts of appeals; and the same shall be expended, accounted for, and paid for, and paid over to the Treasury Department of the United States in the same manner as is provided in respect of the costs and fees in the Supreme Court. The court shall have power to establish all rules and regulations for the conduct of the business of

Circuit court of appeals.

Quorum.

Seal. Writs.

Appointment of marshal.

Appointment of clerk.

Cost and fees.

Rules and regulations.

the court within its jurisdiction, as conferred by law.

Who competent to hold court.

SECT. 3. That the Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the circuit judges within each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits in the manner hereinafter provided. In case the Chief Justice or an associate justice of the Supreme Court should attend at any session of the circuit court of appeals he shall preside, and the circuit judges in attendance upon the court, in the absence of the Chief Justice or associate justice of the Supreme Court, shall preside in the order of the seniority of their respective commissions.

When district judges competent.

In case the full court at any time shall not be made up by the attendance of the Chief Justice or an associate justice of the Supreme Court and circuit judges, one or more district judges within the circuit shall be competent to sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: Provided, that no justice or judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals. A term shall be held annually by the circuit court of appeals in the several judicial circuits at the following places: In the first circuit, in the city of Boston; in the second circuit, in the city of New York; in the third circuit, in the city of Philadelphia; in the fourth circuit, in the city of Richmond; in the fifth circuit, in the city of New Orleans; in the sixth circuit, in the city of Cincinnati; in the seventh circuit, in the city of Chicago; in the eighth circuit, in the city of St. Louis; in the ninth circuit, in the city of San Francisco; and in such other places in each of the above circuits as said court may from time to time designate. The first terms of said courts shall be held on the second Monday in January, 1891, and thereafter at such times as may be fixed by said courts.

95

When judges not competent.

Where court to be held.

No appeal to existing circuit courts.

SECT. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing

Appeals, &c., to circuit court of appeals and Supreme Court U. S.

circuit courts, but all appeals by writ of error or otherwise, from said district courts shall only be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had only in the Supreme Court of the United States, or in the circuit courts of appeals, hereby established according to the provisions of this act regulating the same.

Appeals, &c., to Supreme Court U. S. on question of.

96 SECT. 5. That appeals or writs of error may be taken from the district courts, or from the existing circuit courts direct to the Supreme Court in the following cases:

Jurisdiction.

In any case in which the jurisdiction of the court is in issue; in such cases the question or jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

Prize causes.

From the final sentences and decrees in prize causes.

Capital or infamous crime.

In cases of conviction of a capital or otherwise infamous crime.

Construction or application of Constitution of U. S.

In any case that involves the construction or application of the Constitution of the United States.

Constitutionality of any law of U. S., or validity or construction of a treaty.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

Constitution or law of State in contravention of Constitution of U. S.

In any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Appeals from highest court of a State.

Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State, nor the construction of the statute providing for review of such cases.

Circuit court of appeals.

SECT. 6. That the circuit courts of appeals established by this act shall exercise appellate

Jurisdiction.

jurisdiction to review by appeal or writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties

Non-residents.

97 to the suit or controversy, being aliens and citizens of the United States or citizens of different States; also in all cases arising under

the patents laws, under the revenue laws, and under the criminal laws and in admiralty cases, excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Patent laws. Revenue laws. Criminal laws. Admiralty.

May certify to Supreme Court questions of law.

Action of Supreme Court to be binding.

Supreme Court may require record and decide whole controversy.

And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

When Supreme Court may require case to be certified.

In all cases not hereinbefore, in this section, made final, there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States, where the matter in controversy shall exceed $1,000 besides costs. But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed.

Right of appeal, &c., in other cases.

98 SECT. 7. That where, upon a hearing in equity in a district court, or in an existing circuit court, an injunction shall be granted or continued by an interlocutory order or decree, in a cause in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction to the circuit court of appeals: Provided, that the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court during the pendency of such appeal.

When appeal may be taken from interlocutory decree granting injunction.

Appeal to be taken within 30 days, and take precedence.

Proceedings below not to be stayed.

Expenses of judge holding court other than place of residence.

SECT. 8. That any justice or judge, who, in pursuance of the provisions of this act, shall attend the circuit court of appeals held at any place other than where he resides, shall, upon his written certificate, be paid by the marshal of the district in which the court shall be held, his reasonable expenses for travel and attendance not to exceed ten dollars per day, and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

Marshal of district to provide rooms, &c.

SECT. 9. That the marshals of the several districts in which said circuit court of appeals may be held, shall, under the direction of the Attorney General of the United States, and with his approval, provide such rooms in the public buildings of the United States as may be necessary, and pay all incidental expenses of said court, including criers, bailiffs, and messengers: Provided, however, that in case proper rooms cannot be provided in such buildings, then the said marshals, with the approval of the Attorney General of the United States, may, from time to time, lease such rooms as may be necessary for such courts. That the marshals, criers, clerks, bailiffs, and messengers, shall be allowed the same compensation for their respective services as are allowed for similar services in the existing circuit courts.

99

Compensation of marshals, criers, &c.

Cases reviewed in Supreme Court to be remanded, &c.

SECT. 10. That whenever on appeal or writ of error or otherwise, a case coming directly from the district court or existing circuit court shall be reviewed and determined in the Supreme Court, the cause shall be remanded to the proper district or circuit court for further proceedings to be taken in pursuance of such determination. And whenever, on appeal or writ of error or otherwise a case coming from a circuit court of appeals shall be reviewed and determined in the Supreme Court, the cause shall be remanded by the Supreme Court to the proper district or circuit court for further proceedings in pursuance of such determination. Whenever on appeal or writ of error or otherwise a case coming from a district or circuit court shall be reviewed and determined in the circuit court of appeals in a case in which the decision in the circuit court of appeals is final, such cause shall be remanded to the said district or circuit court for further proceedings to be there taken in pursuance of such determination.

Cases reviewed by circuit court of appeals to be remanded, &c.

Time in which appeal, &c., shall be taken.

SECT. 11. That no appeal or writ of error by which any order, judgment, or decree may be re-

viewed in the circuit courts of appeals under the provisions of this act shall be taken or sued out except within six months after the entry of the order, judgment, or decree sought to be reviewed: Provided, however, that in all cases in which a lesser time is now by law limited for appeals or writs of error such limits of time shall apply to appeals or writs of error in such cases taken
100 to or sued out from the circuit courts of appeals. And all provisions of law now in force regulating the methods and system of review, through appeals or writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect of the circuit courts of appeals, including all provisions for bonds or other securities to be required and taken on such appeals and writs of error, and any judge of the circuit courts of appeals, in respect of cases brought or to be brought to that court, shall have the same powers and duties as to the allowance of appeals or writs of error, and the conditions of such allowance, as now by law belong to the justices or judges in respect of the existing courts of the United States respectively.

Bonds on appeals, &c.

Allowance of appeals, &c.

SEC. 12. That the circuit court of appeals shall have the powers specified in section 716 of the Revised Statutes of the United States.

To have powers specified in sec. 716, R. S.

SEC. 13. Appeals and writs of error may be taken and prosecuted from the decisions of the United States court in the Indian Territory to the Supreme Court of the United States, or to the circuit court of appeals in the eighth circuit, in the same manner and under the same regulations as from the circuit or district courts of the United States, under this act.

Indian Territory.

SEC. 14. That section 691 of the Revised Statutes of the United States, and section 3 of an act entitled "An act to facilitate the disposition of cases in the Supreme Court, and for other purposes," approved February 16, 1875, be and the same are hereby repealed. And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding sections 5 and 6 of this act are hereby repealed.

Sec. 691, R. S., repealed.

Sec. 3, act Feb. 16, 1875, repealed.

101 SEC. 15. That the circuit court of appeal, in cases in which the judgments of the circuit courts of appeal are made final by this act, shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments,

orders, and decrees of the supreme courts of the several Territories as by this act they may have to review the judgments, orders, and decrees of the district court and circuit courts; and for that purpose the several Territories shall, by orders of the Supreme Court, to be made from time to time, be assigned to particular circuits. Supreme Court of Territories.

Approved March 3, 1891.

Joint resolution to provide for the organization of the circuit courts of appeals.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first meeting of the several circuit courts of appeals mentioned in the act of Congress passed at this present session, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," shall be held on the third Tuesday in June, A. D. eighteen hundred and ninety-one; and if, from any casualty, the first meeting of any of said courts shall fail to be so held on that day, the first meeting of any such court so failing to be held, shall be held on such day subsequent thereto as the Chief Justice, or any justice of the Supreme Court of the United States assigned to such circuit, shall direct; and be it further resolved, that nothing in said act shall be held or construed in anywise to impair the jurisdiction of the Supreme Court or
102 any circuit court of the United States in any case now pending before it, or in respect of any case wherein the writ of error or the appeal shall have been sued out or taken to any of said courts before the first day of July, anno Domini eighteen hundred and ninety-one. First meeting of circuit court of appeals. Cases now pending in Supreme and circuit courts.

Approved March 3, 1891.

103 In the Circuit Court of the United States, Eastern District of Pennsylvania, October Term, 1891.

BLACK
vs.
BLACK. } No. 191.

The plaintiff excepts to the surety on the bond filed in this cause, conditioned that the defendant will prosecute *his* writ of error with effect—

1st. Because the said surety is not authorized to become a surety on a bond such as this upon which it contracts to be surety.

2nd. Because by the charter exhibited by the said surety no power is conferred on the said company to contract as a surety on such a bond.

3rd. Because there is no evidence of an acceptance of any charter, if there be such a charter, by the stockholders of the company as authorizes the said company so to contract.

R. C. McMURTRIE.

January 31st, 1893.

[Endorsed:] 191. Dec., 1891. C. C. U. S., E. D. Pa. Black *v.* Black. Exceptions to surety surwrit of error. R. C. McMurtrie.

104 United States Circuit Court, E. D. Pa.

BLACK *vs.* BLACK. } October Sessions, 1891. No. 191. *In re* Surety.

CITY OF PHILADELPHIA, *ss:*

Daniel W. Slack, being duly sworn, deposes and says that he is the secretary of the Solicitors' Loan and Trust Company, a corporation incorporated under the laws of the Commonwealth of Pennsylvania, having its office in the city of Philadelphia; that the said corporation was incorporated as a title and trust company under the corporation act of 1874 and its supplements; that the said corporation has duly accepted the act of May 9th, 1889, and has filed in the office of the secretary of the Commonwealth the affidavit and certificate of acceptance required by the said act; that the said corporation has a paid-up capital of five hundred thousand dollars ($500,000) and a surplus fund of two hundred and fifty thousand dollars ($250,000); that the par value of its capital stock is fifty dollars ($50) per share, and the market value of the same is sixty-nine dollars ($69) and upwards; that the said corporation pays dividends at the rate of six per cent. per annum; that the said company is accepted as surety in the orphans' court and the courts of common pleas of the city of Philadelphia and in the supreme court of the State of Pennsylvania upon its own recognizance, and in particular has been accepted by the circuit court of the United States upon
105 a bond for thirty thousand dollars, filed as surety for Edward S. Handy, Junior, trustee, on the twenty-fourth day of October, 1890.

DAN'L W. SLACK.

Sworn and subscribed before me this thirty-first day of January, A. D. 1893.

Witness my hand and notarial seal.

J. R. RITTER,
Notary Public.

[SEAL.]

(Endorsed:) 191. Oct. sess., 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black. Affidavit of Daniel W. Slack, sec'y of the Solicitor-' Loan and Trust Company, surmotion for approval of surety. Filed Feb. 2, 1893.

106 THURSDAY, *February 2nd*, 1893.

The court is opened pursuant to adjournment.
Present: Hon. George M. Dallas, circuit judge.

BLACK
vs.
BLACK. } No. 191. October Sessions, 1891.

Argued on application of defendant for approval of bond of Solicitors' Loan and Trust Company of Philadelphia as surety for defendant upon writ of error on question of jurisdiction to Supreme Court of the United States.

Mr. Tobin, for application.
Mr. Hunter, for Solicitors' Company.
Mr. McMurtrie, for exceptions.
Opinion of court denying application for approval of surety.

107 C. C. U. S., Eastern District of Pennsylvania, Oct. T., 1891.

BLACK
vs.
BLACK. } No. 191.

Surapplication for Approval of Surety upon Writ of Error.

The defendant has in this case offered the Solicitors' Loan and Trust Company, or, as it is named in the letters patent of the governor of the State of Pennsylvania, "The Solicitors' Company," as surety upon writ of error to the Supreme Court of the United States. The defendant has filed three exceptions to the corporation so offered as surety, which amount, in substance, to an averment that said corporation is without authority to become such surety.

Counsel for the respective parties have been fully heard and the court has also had the benefit of an able presentation of the views of the counsel for the corporation in question in support of its asserted power and authority to become surety on a bond such as is now under consideration. The power and authority asserted are claimed to be derived from and granted by an act of the General Assembly of the State of Pennsylvania entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and the supplements thereto (under which this corporation was created); and also from and by a certain other statute of the same State, entitled "An act supplementary to"

108 the act before mentioned, &c., approved the 9th day of May, 1889. (P. L., 159.)

For the plaintiff it is contended, 1st, that the power and authority in question are clearly not conferred by the act of 1874; and, 2nd, that though it is admitted that the act of 1889 does in terms give "the power and right" "to become security upon any writ of error or appeal or in any proceeding instituted in any court of this Commonwealth in which security may be required," the last-

mentioned act cannot avail to entitle this corporation to be approved as surety in this case because it has not been in any manner or form whatever accepted by the stockholders of the corporation.

Exceptions to the sufficiency of a corporation tendered as surety may be founded upon either or both of two distinct grounds—that it is not of pecuniary responsibility, such as to warrant its approval, or that it is not possessed of lawful power to bind itself in the manner proposed. The first ground is not asserted, but in fact is wholly disclaimed. It therefore need not be & is not considered. The only question raised and to be passed upon is that which relates to the ground second above mentioned, and I may say, in passing, that in determining it no other matters, such as whether the writ of error, even upon approval of security, would or would not operate as a supersedeas, although discussed at bar, will be to any extent considered.

An affidavit of the secretary of the Solicitors' Loan and Trust Company has been submitted, and will be filed herewith, from
109 which it appears that said company is accepted as surety in several of the courts of the State of Pennsylvania, and the records of this court disclose that it has been twice accepted here. It does not appear, however, that the point now made has ever been determined by or even suggested to any Pennsylvania court, and it is plain, beyond question, that it has never until now been brought to the attention of this court. In the instance mentioned in the affidavit of the secretary the bond was filed in the clerk's office without even formal action by the court or any judge thereof. In the other case (Earnshaw *vs.* McHose, October sess., 1890, No. 63), the written memorandum of counsel for the opposing party was endorsed upon the bond, "Security satisfactory," and this memorandum was signed by said counsel. Thereupon the security (on error) was formally "approved" by a judge of the court, but manifestly solely with reference to the prior approval of counsel, and cannot therefore be considered as a precedent.

I am compelled accordingly to view this question as one of first impression, so far as this court is concerned, but I cannot disregard the fact that probably, and as stated by counsel, many such bonds have been approved by other tribunals and at least in one instance by this court, and are now outstanding. The effect of a positive decision adverse to the right claimed might be to unsettle or to raise a doubt with respect to other transactions the parties to
110 which are not before the court. I therefore decline to pronounce judgment as to the existence or non-existence of the power of this company to become surety as proposed. It is not, I think, necessary that I should do so. The present application may be disposed of, and rightly, as I think, without the determination of that matter.

If the objection to the proposed surety were based (as it is not) upon an averment of its financial irresponsibility, it might be rejected without deciding that it is or is likely to become insolvent. A reasonable doubt of its sufficiency to adequately secure the plaintiff would be enough. So here I need only say that the plaintiff

has satisfied me that there is fair ground for questioning the power of this company to bind itself as proposed, and that I think a bondsman should be tendered, where demanded, as to whom no such question can reasonably be suggested.

I have not overlooked the facts that the act of 1889 contains a provision for certification of its acceptance by the directors of the company, and that this certification was made, but, in my opinion, the question to which I have referred is not removed by these facts.

A question—a substantial question—still remains, and that, as I have said, requires the withholding of my approval.

There is, too, at least room to doubt whether the power conferred in terms by the act of 1889, "to become security upon any writ of error or appeal," extends to cases in this court. The lan-
111 guage "any court of this Commonwealth" may be understood to restrict the power to cases in the courts of Pennsylvania. This subject, however, was not discussed by counsel and I express no opinion with respect to it.

The motion to approve surety is denied.

(Signed) GEO. M. DALLAS,
Cir. Judge.

Feb'y 2, 1893.

Endorsed: No. 191. October sess., 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black. Opinion of court denying application for approval of surety. Filed February 2nd, 1893.

112 Circuit Court of the United States for the Eastern District of Pennsylvania.

BLACK
vs. } Oct. Term, 1891. No. 191.
BLACK.

Alias L. F. No. 1, Oct., 1892.

Issue pluries writ of *lev. fac.* in the above case, returnable next return day.

R. C. McMURTRIE,
Per W. W., Jr., *For Pl'ff.*

To Col. Samuel Bell, clerk of C. C. U. S., E. D. of Pa.

March 10th, 1893.

(Endorsed:) 1. Oct. sess., 1892. C. C. U. S., E. D. of Pa. Black *vs.* Black. Præcipe for *pluries L. F.* Filed Mar. 10, 1893. McMurtrie.

113 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State — New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

October Sessions, 1891. No. 191.

The defendant comes and moves to quash the writ, set aside the levy, and stay the sale in the above case, and assigns the following reasons therefor:

First. Because in the writ of execution are set forth *as* the term and number of the case, which term and number are false, erroneous, misleading, and unlawful.

Second. Because the properties have not been properly mentioned and described in the writ, nor have the proper boundaries and descriptions of the several lots been given.

Third. Because the said sale has not been properly or lawfully advertised.

(Signed) MARY M. BLACK.

STATE OF PENNSYLVANIA, *County of Philadelphia*, } *ss*:

Mary M. Black, being duly affirmed according to law, de-
114 pose and says that she is defendant in the above case, and that the facts set forth in the foregoing motion to quash are true to the best of deponent's knowledge, information, and belief.

(Signed) MARY M. BLACK.

Affirmed and subscribed to before me this 24th day of March, A. D. 1893.

GEO. W. REED,
[SEAL.] *Notary Public.*

Copy.

[Endorsed:] Copy. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Oct. sess., 1891. C. C. U. S., E. D. of Penn. No. 191. Motion to quash writ, set aside levy, and stay sale. Enter rule on plaintiff to show cause why the writ in above case should not be quashed, levy set aside, and sale stayed, returnable A. D. 1893, at 10 a. m., all proceedings to stay in the meantime. Francis Tracy Tobin, Wm. W. Ker, att'ys *pro* defendant.

115 Copy.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

STATE OF PENNSYLVANIA, *City & County of Philadelphia,* } *ss:*

Chester E. Albright and James W. Phillips, being duly sworn according to law, depose and says that they are civil engineers & surveyors, and that deponents examined and compared the advertisement for the U. S. marshal's sale in the above case, with the maps, plans, and mortgages, per the said advertisment, and found the following errors and discrepancies, to wit: 7th, "north 32° 31′ east," instead of "north 32° 1′ east." 9th, "22°;" in 17th, "29°;" 9th, "$189\frac{3}{100}$ P.," and in the mortgage "$100\frac{3}{100}$ P."

13th. Containing "according to a recent survey about 382 A.," when the mortgage calls for 350 A., and there is nothing to show of the recent survey.

16th. "Recorded in Deed Book L. R. B., 209, 471," which
116 is not correct.

17th "29°;" in 9th, "22°."

Number one, "$11,000, dated May 39, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17," which is not correct.

Deponents find many mistakes.

(Signed) CHESTER E. ALBRIGHT.
JAS. W. PHILLIPS.

Sworn and subscribed to before me this 29th day of March, A. D. 1893.

GEO. W. REED,
[SEAL.] *Notary Public.*

Copy.

[Endorsed:] Copy. Black *vs.* Black. Affidavit of Chester E. Albright & James W. Phillips, civil engineers & surveyors. Francis Tracy Tobin, Wm. W. Ker, att'ys *pro* defendant.

117 THURSDAY, *March 30th,* 1893.

The court is opened pursuant to adjournment.

Present: Hon. Marcus W. Acheson, circuit judge.

BLACK *vs.* BLACK. } No. 191. Oct. Sess., 1891.

Surmotion to quash writ and set aside levy and stay sale.

Francis Tracy Tobin, Esq., Wm. W. Ker, Esq., for; Mr. McMurtrie, *contra.*

Motion denied.

118 C. C. U. S., E. D. of Penna.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

October Sessions, 1891.
No. 191.

To the honorable the judge of the C. C. of the U. S. for the E. D. of Pennsylvania:

The petition of Mary M. Black, the defendant in the above case and administratrix of Edgar N. Black, deceased, respectfully represents that a greater portion of the property advertised for sale in the above case by the United States marshal for the eastern district of Pennsylvania on Monday, April 3rd, A. D. 1893, is situated and lies in Delaware county, State of Pennsylvania.

Your petitioner humbly prays your honorable court to order and direct the said United States marshal for the eastern district of Pennsylvania to sell the said property in Delaware county, Pennsylvania, in tracts, and at the court-house, in Media, Delaware county, Pennsylvania, and to give proper notice of the said sale at the court-house, in Media, Delaware county, Pennsylvania. The property is advertised for sale at the U. S. marshal's office for the E. D. of Pennsylvania, 3rd floor, Post-office building, Philadelphia, Pennsylvania.

And your petitioner will ever so pray.

MARY M. BLACK.

119 STATE OF PENNSYLVANIA, } *ss.*:
County of Philadelphia, }

Mary M. Black, being duly affirmed according to law, depose- and says that the facts set forth above are true to the best of deponant's knowledge, information, and belief.

MARY M. BLACK.

Affirmed and subscribed to before me this first day of April, A. D. 1893.

GEO. W. REED,
[SEAL.] *Notary Public.*

(Endorsed:) Oct. sess., 1891. C. C. U. S., E. D. of Penna. 191. Black *vs.* Black. Petition of Mary M. Black asking that the property in Del. Co., Penn., will be sold at the court-house in Media, Del. Co., Penna. Filed Apr. 1, 1893. Francis Tracy Tobin, Wm. W. Ker, att'ys *pro* defendant.

120 SATURDAY, *April 1st*, 1893.

The court is opened pursuant to adjournment.
Present: Hon. Macus W. Acheson, circuit judge.

BLACK
vs.
BLACK, Adm'x, &c. } No. 191. October Sess., 1891.

Surmotion by defendant to have the sale of the property advertised to be sold on Monday, Aprii 3rd, 1893, in Delaware county, at the court-house in Media, Del. Co., Penna.

Mr. Tobin, for; Mr. McMurtrie, *contra*.

Motion denied.

121 *Pl's Levari Facias.*

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The United States of America to the marshal of the eastern district of Pennsylvania, Greeting:

We command you, as before we did, that, without any other writ from us, of the lands and tenements which were of Edgar N. Black, to wit:

1st. All that certain lot or piece of meadow ground situate on State or Province island, in the 24th ward of the city of Philadelphia (formerly in the township of Kingsessing), bounded and described, according to a survey made thereof by Edward Lynch, surveyor, June 13, 1802, as follows, to wit: Beginning at a stake in the middle of a road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill river, thence by the middle of a ditch dividing this from land released to Elizabeth Taylor south thirty-nine degrees thirty minutes east fifty and one-tenth perches to the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of said bank the several courses thereof forty-nine and one-tenth perches or thereabout to a stake by the side of Eagle creek; thence along the same several courses thereof seventy-three seven-tenths perches to a stake in the middle of the aforesaid road or lane; thence along the middle thereof north forty-seven degrees forty-five minutes east twenty-eight and one-tenth perches to the place of beginning, containing fifteen acres and five perches, exclusive of the creek, and also the cripple and marsh land which lieth between the said described embanked lot and low-water mark on Delaware river and Eagle creek.

2d. Also all that lot or piece of ground (being the northeastern-most part of four contiguous lots or pieces of ground marked on a plan of said State or Province island Nos. 16, 17, 18, and 19) bounded and described, according to the aforementioned survey, as follows, viz: Beginning at a stake in the middle of the road or lane leading from Eagle creek into a road leading to the ferry on Schuylkill, thence extending along the middle of a ditch by lot No. 15, now or late belonging to Edward Sprogell, south forty-two degrees east

forty-six nine-tenths perches to a stake in the middle of the bank dividing this from the marsh and cripple on Delaware river; thence extending along the middle of the said bank south thirty-eight three-fourths degrees west twenty-eight perches to a stake and south fifty and one-half degrees west eighteen and three-tenths perches to a stake; thence along the middle of another ditch dividing this from the remainder of the aforesaid four contiguous lots released to the said Edward Sprogell north thirty-nine degrees thirty minutes west fifty and one tenth perches to a stake in the middle of said road; thence extending by the same north forty-seven and one-fourth degrees east forty-three and seven-tenths perches to the place of beginning, containing thirteen acres and one hundred and forty perches, together with the cripple and marsh land which lieth between the said last-described embanked land and low-water mark on Delaware river.

3d. Also all that lot and piece of ground or meadow situate in the 24th ward aforesaid (formerly the township of Kingsessing), being part of State or Province island aforesaid, and the lot marked in the general plan thereof No. 15, beginning at a stake near a large old stump standing on the edge of the cripple and a small distance south of the Hospital wharf, thence by the said cripple south forty degrees west twenty-one and six-tenths perches to a stake set in the bank in the line of lot No. 16, sold to Charles Miller; thence by said lots north forty degrees thirty minutes west forty-six perches to a stake set in the middle of the road leading southwestwardly from the Hospital road through the marsh; thence by the said road north forty-seven degrees forty-five minutes east thirty-two perches to a stake set for a corner in the middle of the Hospital road; thence by the same road the line of the Hospital lot south twenty-eight degrees thirty minutes east forty-five perches to the first-mentioned stake and place of beginning, containing by a resurvey seven acres and one-fourth and twenty-one perches, exclusive of the flat or guard along the river; and also all the cripple and marsh land which lieth between the above-described embankment lot and the low-water mark on the Delaware river.

4th. Also all that lot or piece of ground situate on the said State or Province island, in the 24th ward aforesaid, marked on the aforesaid plan of said island No. 23, bounded and being as follows, viz: Beginning at a stake in the middle of the road leading from the (late) pest-house to the ferry on Schuylkill, thence extending by lot No. 22 south forty-seven degrees forty-five minutes west fifty-nine perches and seven-tenths to a post; thence by lot No. 21 north forty-two degrees fifteen minutes west twenty perches to a post; thence by lot No. 24 north forty-seven degrees forty-five minutes east sixty-four and four tenths perches to a stake in the middle of the aforesaid road; thence along the middle thereof south twenty-eight degrees thirty minutes east twenty and five-tenths perches to the place of beginning, containing seven acres and one hundred and twenty perches of land, be the same more or less.

5th. Also a strip of land, three-tenths of a perch in width, extending along the boundary line of the tracts or parcels of land above de-

scribed, Nos. 1 and 2, but which is now included in and forms part of the tracts or parcels described as No. 1.

122 6th. Also all the cripple marsh meadow land and alluvion lying adjacent to the aforedescribed parcels between the present bank and the low-water mark of the inner channel of the River Delaware, in front thereof, extending from a line opposite to the bank across the ditch or drain called Eagle creek along said low-water mark of the said channel of the River Delaware to the boundary line of the property now owned by the United States, at present in the tenancy and occupation of the said Edgar N. Black, as their lessees, being the same premises which William Jacob Wonderly and Phœbe Suplee, his wife, by a certain indenture, dated February 19, 1859, recorded at Philadelphia, in Deed Book A. D. B. No. 51, page 459, granted and conveyed unto the said Edgar N. Black in fee.

The improvements on the six tracts of ground above described are a three-story frame house, a small frame house, hay scales, hay barrack.

7th. And also all that certain lot or piece of ground situated in the 24th ward aforesaid (formerly the township of Kingsessing) bounded and described as follows: Beginning at a stake on the top of the bank in direct continuation of the line of the middle of Eagle creek, thence up the middle of said creek by other land of Black north forty-seven degrees nineteen minutes west twelve perches and eleven hundredths and north sixty-three degrees west five perches and two hundredths to a stake opposite the middle of a new ditch, made for the dividing line between this and other ground, formerly of Pearson Serrill; thence along middle of said ditch south forty-eight degrees west forty-four perches and five-hundredths to the middle of a ditch dividing this from land of Matthias Powers; thence along the line of said Powers' land the six following courses and distances, viz., along the middle of said ditch south thirty-four degrees five minutes east seventeen perches to a stake in the top of the old bank; thence along the top of the bank south fifty-two degrees thirty-seven minutes west fourteen perches and eighty-five hundredths to a stake and south fifty-five degrees seven minutes west five perches and four-tenths to a stake near a buttonwood, thence across the meadow south thirty-four degrees fifty-nine minutes east fifty-five perches and eight-tenths to a stake in the bank, thence along the bank north thirty-two degrees thirty-one minutes east three perches, thence across the flats south fifty-seven degrees and twenty-nine minutes east fifteen perches and four-tenths to the line of low-water mark in the back channel of the River Delaware, thence along the said low-water mark or line north twenty-eight degrees four minutes east sixty-five perches and fifty-six hundredths and north thirty-eight degrees and fifty-four minutes east sixteen perches and six-tenths to a stake, thence across the flats by other land of said Black north fifty-three degrees twenty-nine minutes west forty-three perches and eight-tenths to the stake in the bank and place of beginning, containing in the said boundaries thirty-one acres and ninety-four perches and ninety-four hundredths, more or less, together with all the land, being about one hundred perches additional, lying directly in front

of the said described tract between said low-water line and the middle of the said back channel of the Delaware river, being the same premises which Isaac S. Serrill and others, by indenture bearing date the twenty-fifth day of September, anno Domini eighteen hundred and sixty-two, duly executed and acknowledged and intended to be forthwith recorded, according to law, granted and conveyed unto the said Edgar N. Black in fee.

There are no improvements on this tract.

On the above-described properties there is a mortgage debt of ten thousand dollars, amounting, together with interest to November 10, 1891, to fifteen thousand three hundred and forty-one dollars and nineteen cents. The mortgage bears date December 22, 1862, and is recorded at Philadelphia, in Mortgage Book A. C. H. No. 41, page 508, under and subject to which this *levari facias* is issued.

8th. All those eight several contiguous tracts or parcels of land situate, lying, and being on Hog island, in the River Delaware, in the county of Delaware, in the State of Pennsylvania, *on* which are marked upon a plan of survey made by Elijah Porch, dated October 10, 1816, as Nos. 1, 2, 3, 6, 7, 8, 9, 10, and together bounded and described as follows:

Beginning at a post in the cross-bank dividing the said lands from lands now of John Black and formerly of Samuel Whitall and corner of lots marked on said plan Nos. 3, 4, thence by a line dividing the said lots Nos. 3, 4 and 3, 5 and 8, 11 north seventy-nine degrees east one chain and seventy-five links; thence by the line of lot No. 5 five chains and fifty links to a point; thence north sixty degrees east four chains and seventy links to the line or ditch dividing lots marked on said plan Nos. 3, 8; thence south seventy-eight degrees west five chains and ninety links to the bank of the back channel; thence to the middle of the back channel, which divides the island from the mainland; thence in a southerly direction along the course of the said back channel to the low-water mark in the River Delaware, and thence eastwardly by the line of the low-water mark along and around the shore of the said island to a point opposite to a post by the side of the bank on the southerly side of the island and corner lots marked on said plan Nos. 1 and 2; also a corner of lands now of John Black, late of Samuel Whitall aforesaid; thence along the line of the said cross-bank, the boundary or division line of the lands thereby granted and those of John Black, north fifteen minutes west to the place of beginning, and containing within the banks, by estimation and according to said survey, ninety-three acres, be the same more or less, bounded on the
123 north by the lots marked on the said plan Nos. 4, 5, and 11, on the west and south by the low-water mark of the River Delaware, and east by lands formerly of Samuel Whitall, and now the property of John Black, being the same premises which Isaac Reeves and Samuel M. Reeves and Hannah W., his wife, by indenture dated April 11, 1857, and recorded in the office for recording deeds, etc., in and for Delaware county, in Deed Book D No. 2, page 638, granted and conveyed unto the said Edgar N. Black in fee.

The improvements consist of two and one-half story frame house and barn; also a three-story frame house and barn.

On this property there is a mortgage debt of five thousand dollars, amounting, together with interest to November 10, 1891, to seven thousand six hundred and seventy dollars and fifty-nine cents. The mortgage bears date October 1, 1867, and is recorded in Delaware county, in Mortgage Book X, page 469; also a mortgage debt of eighteen thousand three hundred dollars, amounting, together with interest to August 14, 1891, to twenty-seven thousand seven hundred and thirty-three dollars and ninety-four cents, and is recorded in Philadelphia, in Mortgage Book F. T. W. No. 127, page 358, and in Delaware county, in Mortgage Book Z No. 2, page 281, under and subject to which this *levari facias* is issued.

9th. All that certain tract or piece of meadow situate in Tinicum, Delaware county, beginning at a stone in Martin's lane, thence along the said lane north twenty-two degrees west twenty-three and fifteen-hundredths perches to a stake, a corner of land belonging to the estate of William Bingham, deceased; thence by the same (partly along a ditch) north sixty-four and one-half degrees east one hundred and seventy-four and forty-two hundredths perches to the middle of Bow creek, passing over a stone which is forty-three and one-half feet from the middle of said creek; thence along the middle of said creek by other land of Edgar N. Black (said creek being the dividing line of Philadelphia and Delaware counties) the several courses thereof twenty-one and seventeen one-hundredths perches; thence by the same land along the middle of the ditch south sixty-two degrees west one hundred and eighty-nine and three one-hundredths perches to the place of beginning, containing twenty-two acres two perches, more or less (being the same tract of land which Joseph Carson, executor of the last will of Catherine Carson and Susanna Carson, deceased, and others, by deed dated December 22, 1875, and recorded in the office for recording deeds, etc., in and for said Delaware county, in Deed Book W No. 3, page 651, granted and conveyed unto the same Edgar N. Black in fee).

No improvements on this property.

On this property there is a mortgage debt of eleven thousand dollars, amounting, together with interest to July 1, 1891, to sixteen thousand six hundred and seven dollars and ninety-six cents. The mortgage bears date January 1, 1876, and is recorded in Delaware county, in Mortgage Book K No. 3, page 223.

Under and subject to which this *levari facias* is issued.

10th. All that certain tract or piece of meadow land and flats situate in the township of Tinicum, Delaware county, beginning at a point in the middle of Tinicum road at a corner of lands of Hannah S. Harper, thence along the middle of said road north sixty-three degrees east forty-seven and ninety-three hundredths perches to a point in the middle line of Kinsey's lane; thence along the middle of said lane south twenty-five degrees east to low-water mark of the Delaware river; thence westward along low-water mark of the Delaware river about sixty-five perches to said land of Hannah S. Harper; thence north eighteen degrees and twenty-five minutes west along

the said Hannah S. Harper's ground to the place of beginning, containing inside the river bank forty-four acres and forty-eight square perches of land, and the flats outside the river bank to low-water mark containing about twelve acres.

11th. And also that certain tract of meadow land situate in the township of Tinicum aforesaid, beginning in the middle of Kinsey's lane aforesaid at the corner of lands above described and of estate of Samuel Crothers, deceased, thence along Crothers' ground north sixty-five degrees forty-nine minutes east fifty-eight and forty-nine one-hundre-ths perches to a point, the line of land of J. C. Andrews; thence along said Andrews' ground south twenty-four degrees three minutes east fifty-one and seventy-eight hundre-ths perches to the bank of the Delaware river; thence along said bank south seventy-two degrees fifty-one minutes west forty-eight and forty-two hundre-ths to a point; thence still along said bank north thirty-nine degrees thirty-eight minutes west thirteen and twelve one-hundre-ths perches to a point; thence still along said bank north eighty-seven degrees west seven and eighty-six one-hundre-ths perches to the middle of said Kinsey's lane; thence along the middle of said lane north twenty-three degrees fifty minutes west twenty-nine and sixty-two one-hundre-ths perches to the place of beginning, containing (according to a survey made by Benj. H. Smith, May 31, 1876) sixteen acres one hundred and forty-four fifty-three one-hundre-ths perches.

124 12th. And also all the "flats" lying in front of the last-described lot of land between the line of said land of said Andrews and the tract first above described and extending to low-water mark of the River Delaware (being the same premises, Nos. 10, 11, 12, which the said James P. Serrill and Emma M., his wife; Susan, George, and Jacob S. Serrill, by indenture dated August 1, 1876, and intended to be forthwith recorded (Deed Book D No. 4, p. 458), for the consideration therein mentioned, part whereof is intended to be hereby secured, granted and conveyed unto the said Edgar N. Black in fee).

On this property there is a mortgage debt of six thousand one hundred and eighty dollars and forty-nine cents, amounting, together with interest to August 1, 1876, to eight thousand two hundred and seventy-five dollars and twelve cents. The mortgage bears date August 1, 1876, and is recorded in Delaware county, in Mortgage Book R No. 3, page 581, under and subject to which this *levari facias* is issued.

No improvement on this property.

13th. The interest of said Edgar N. Black, being one undivided third part in and to all that certain tract of land, being part of Hog island, situate in Tinicum township, Delaware county, State of Pennsylvania, beginning at a point at low-water mark of the River Delaware opposite the middle of the lane dividing the premises hereinafter described from that part of that island formerly belonging to Samuel and Isaac Reeves and now owned by Edgar N. Black, thence along said low-water mark of the River Delaware to a stone, a point of land belonging to the United States Government, on which

Fort Mifflin stands; thence along said land north eight degrees twenty-five minutes east fifteen hundred and fifty-one feet and thirty-five hundredths of a foot, more or less, to the middle of the back channel; thence along the middle of the said back channel the several courses thereof to the centre of a road (crossing said channel) leading from the mainland to Hog island; thence still along the middle of the said back channel the several courses thereof to the middle of a sluice race; thence along the said sluice race to the middle of the lane first above mentioned; thence along the middle of the said lane to the place of beginning, containing three hundred and fifty acres (but according to a recent survey containing about three hundred and eighty-two acres, more or less), being the same premises which by the will of John Black, deceased, as to one-third part thereof, were devised to the said Edgar N. Black in fee and as to the one-third to the said Charles N. Black in fee.

This property is subject to the aforesaid mortgage debt and interest, amounting to sixteen thousand six hundred and seven dollars and ninety-six cents; also to a mortgage debt of ten thousand dollars, amounting, together with interest to October 30, 1891, to fifteen thousand nine hundred and sixty-six dollars and thirty-nine cents. The mortgage bears date October 30, 1876, and is recorded in Delaware county, in Mortgage Book S No. 3, page 129, under and subject to which this *levari facias* is issued.

The improvements on this property consist of a wharf, a large two-story stone and mansard-roof house, a large frame barn and stables, two small frame houses, frame milk-house, large frame kitchen for workman and bake-oven, blacksmith shop, frame barn and corn-crib, one-story long low frame building for workman for sleeping, frame slaughter-house and shed, hay scales and shed, artesian well, 450 feet deep to rock, and large tank.

14th. All that tract of meadow land in the township of Tinicum, Delaware county, in the State of Pennsylvania, beginning at the stake in the middle of the river bank, thence along the side of a thirty-three feet road north twenty-five and one-fourth degrees west forty-six perches to a corner of land of Joseph Ash, late of Thomas Serrill; thence along the middle of a ditch, being a line of the same, south sixty-five degrees west fifty-six and two-tenths perches to a corner of land late of George Serrill, deceased; thence along the middle of a ditch, being a line of the said George Serrill's land south twenty-five and three-fourths degrees east fifty-one and eight-tenths perches to the Delaware river; thence along the river bank north seventy-one and one-half degrees east fifty-one and five-tenths perches; thence north twenty and one-fourth degrees west twelve and one-tenth perches, and thence north seventy-one and one-half degrees east three and sixty-five one-hundredths perches to the place of beginning, containing eighteen acres three roods and twenty-eight square perches, more or less, and also all the flats lying in front of the said low-water mark in Delaware river, being same premises which W. D. M. Serrill and others, by deed dated March 28, 1877, recorded, as aforesaid, in Deed Book H No. 4, page 168, granted and conveyed unto Edgar N. Black in fee.

No improvements on this tract.

On this property there is a mortgage debt of ten thousand dollars, amounting, together with interest to November 30, 1891, to sixteen thousand and seven dollars and eighty-nine cents, which is hereinafter recited, under and subject to which this *levari facias* is issued.

125 15th. All that certain tract or piece of land situate, lying, and being in the 24th ward of the city of Philadelphia (formerly Kingsessing), in the county of Philadelphia, bounded and described as follows: Beginning at a point in the middle of the old bed of the back channel of the River Delaware, now banked off and stopped, a corner of other land of Edgar N. Black, formerly of Pearson Serrill, thence extending north fifty-seven degrees twenty-nine minutes west fifteen and four-tenths perches to a point; thence south thirty-two degrees thirty-one minutes west three perches to a point; thence north thirty-four degrees and fifty-nine minutes west fifty-five and eight-tenths perches to a point; thence north fifty-five degrees seven minutes east five and four-tenths perches; thence north fifty-two degrees thirty-seven minutes east fourteen and eighty-five hundredths perches to a point; thence north thirty-four degrees five minutes west one and nineteen-hundredths perches to the middle of the ditch; thence along the middle of said ditch and along the line of other land now or late of Matthias Powers south fifty-five degrees three minutes west sixty-seven and seven-tenths perches to a point in the land now or late of David B. Kershaw; thence along the middle of a ditch to a line of said Kershaw's land south thirty-three degrees fifty-eight minutes east fifty-seven and seventy-five hundredths perches to the middle of a ditch; thence along the line of said Kershaw's land to the centre of the said back channel, and thence up the middle of said channel the various courses thereof to the place of beginning, containing twenty-six acres of land, more or less (being the same premises which Matthias Powers and wife, by indenture dated December 31, 1863, and recorded at Philadelphia, in Deed Book L. R. B. No. 8, page 148, granted and conveyed unto Edgar N. Black in fee).

The improvements are a hay barrack.

16th. Also all that certain tract or piece of land situate on Carpenter's island, in that part of the city of Philadelphia, 24th ward, formerly called Kingsessing, bounded and described as follows, to wit: Beginning at a stone, the intersection of the division line between lands late of Henry L. Churchman and Thomas Serrill of the newly embanked meadow as laid down in a certain survey made thereof by John Thompson, dated June 2, 1837, and recorded in Deed Book S. H. F. No. 18, page 583, and the line being the middle of the footing ditch and bearing south sixty-seven degrees fifty-seven minutes west, the said division line bearing south thirty-five degrees east, thence along the line of the said footing ditch south sixty-seven degrees fifty-seven minutes west thirty-six and sixty-six hundredths perches to a stone in the middle of said ditch; thence south twenty-five degrees four minutes west to low-water mark in the back channel of the River Delaware; thence along the same to the continu-

ation of the above first-mentioned division line; thence along the same to the place of beginning, containing eight acres fifty-six perches, more or less (being the same tract of land which John J. Henry and wife, by indenture dated August 8, 1866, and recorded in Deed Book L. R. B. 209, 471, granted and conveyed unto Edgar N. Black in fee).

On this tract no improvements.

17th. And also all that certain tract or piece of meadow and marsh land situate, lying, and being in Tinicum township, in the county of Delaware, bounded and described, according to a survey and plan thereof made by Benjamin H. Smith, surveyor, February 1, 1872, as follows: Beginning in the middle of the back channel (separating Martin's bar from Hog island) opposite the mouth of Bow creek, thence extending up the middle of the said Bow creek, on the bed thereof, by the several courses thereof along other land of E. N. Black to a stake or stone bearing north fifty-five degrees twenty minutes east and distant seventy-two feet from a stone in the next-mentioned line, and thence extending south fifty-five degrees twenty minutes west by other land formerly of Joseph Carson, now of the estate of William Alexander Baring Bingham, a minor, three thousand one hundred and eight feet to a stake or stone in the northeastwardly side of Martin's lane; thence extending along the said side of said lane south twenty-nine degrees and fifty-eight minutes east four hundred and ninety-one and seven-tenths feet to a stake or stone in the meadow or outer bank as established in the year 1872; thence extending still further by the said line to the middle of the back channel; thence down the said channel the several courses thereof to the line of low-water mark in the River Delaware on the outer edge of Martin's bar; thence extending up the River Delaware by the said low-water line to a point in the middle of the back channel first mentioned (separating Martin's bar from Hog island); thence extending up the middle of the said back channel to the place of beginning, containing in all two hundred and thirteen acres twenty-seven and forty-five hundredths perches according to recent surveys made thereof by Benjamin H. Smith, surveyor (being the same premises which by two several indentures were granted and conveyed unto Edgar N. Black in fee, one thereof by Alexander Biddle and Charles Hare Hutchinson, guardians of William Alexander Baring Bingham, a minor, dated February 3, 1873, and recorded in the office for recording deeds in and for Delaware county, in Deed Book H No. 3, page 246, etc., the other thereof by George W. Henderson *et al.*, dated April 14, 1860, and recorded, as aforesaid, in Deed Book G No. 2, page 415).

126 The improvements are two frame barns.

On the three last-described properties (Nos. 15, 16, 17) there is the aforesaid mortgage debt of eighteen thousand three hundred dollars, amounting, together with interest to August 14, 1891, to twenty-seven thousand seven hundred and thirty-three dollars and ninety-four cents.

Under and subject to which this *levari facias* is issued.

All of the above-described premises, situate in Delaware county,

are also subject to a mortgage dated May 30, 1877, recorded in Delaware county, in Mortgage Book U No. 3, page 445, on which there is due for principal ten thousand dollars and interest to November 30, 1891, six thousand and seven dollars and eighty-nine cents; in all, sixteen thousand and seven dollars and eighty-nine cents.

Under and subject to which this *levari facias* is issued, together with the hereditaments and appurtenances.

NOTE.—The property will be sold in the following order:

Number one (being No. 13 in the writ). An undivided third of the upper part of Hog island, now called Black's island, on the Delaware river, below Fort Mifflin, Delaware county, containing 382 acres, more or less.

This is sold subject to mortgages as above stated, which also includes other parcels, viz., Nos. 8, 9, 10, 11, 12, 14, 17, viz:

$11,000, dated January 1, 1876, Nos. 9, 13.

$11,000, dated October 30, 1876, No. 13.

$11,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

Number two (being No. 8 in the writ). The lower part of Hog or Black's island, containing 93 acres, more or less.

This is sold subject to mortgages, as above stated, which also includes other tracts, viz., Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, viz:

$5,000, dated October 1, 1867, No. 8.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

Number three (being No. 17 in the writ). A tract of land known as Martin's bar, on the Delaware river, in Delaware county, which lies next below Hog island, divided from it by the back channel, now banked in, and includes the property, formerly the "Bingham estate," on the northerly side of back channel. The two tracts by a recent survey contained 270 acres 2 roods 28 perches.

This is sold subject to mortgages, as above stated, which includes other tracts, viz., Nos. 8, 9, 10, 11, 12, 13, 14, 15, 18, viz:

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

$10,000, dated May 30, 1877, Nos. 8, 9, 10, 11, 12, 13, 14, 17.

And also a mortgage for $6,000 (reduced to $4,800) on the property formerly the "Bingham estate," dated February 3, 1873, recorded in Mortgage Book R No. 2, page 558, held by the Pennsylvania Company for insurances on lives, etc.

Number four (being Nos. 1 to 7, inclusive, and 15 and 16 in the writ, will be sold together), being a tract of land situate on the Fort Mifflin road leading from Penrose Ferry bridge and the back channel, in the 27th ward, Philadelphia.

They contain by recent surveys 135 acres 2 roods 12 perches. They are sold subject to mortgages, as above stated, which also includes the parcels numbered 8 and 17, viz:

$10,000, dated December 22, 1862, Nos. 1 to 7, inclusive.

$18,300, dated February 14, 1874, Nos. 8, 15, 16, 17.

Number five (being Nos. 9 to 12 and 14) will be sold together, being a tract of land situate in Delaware county, adjoining Martin's bar to the west and south, and part thereof fronting on the Delaware river, containing 114 acres, more or less, according to a recent

survey. They are sold subject to mortgage, as above stated, which also include- parcels numbered 8, 13, 17, viz:

$11,000, dated January 1, 1876, Nos. 9 and 13.

$6,180.49, dated August 1, 1876, Nos. 10, 11, 12.

$10,000, dated May 30, 1877, Nos. 8 to 14 and 17.

The above-recited incumbrances amount in the aggregate to $75,280.49, together with interest—

127 Together with the hereditaments and appurtenances in your bailiwick, you cause to be levied, as well as a certain debt of thirty-one thousand three hundred and forty-one dollars and eighty cents, lawful money of the United States of America, with the lawful interest thereof from the 12th day of April, A. D. 1892, and also — dollars and — cents, like money, for costs, which said debt, with interest and costs aforesaid, Mary K. L. Black, a citizen of the State of New York, plaintiff, lately in our circuit court for the eastern district of Pennsylvania, before our judges, at Philadelphia, to wit, on the 12th day of April, A. D. 1892, by the consideration of said court recovered, to be levied of the said above-described property, with the appurtenances, by the default of the said defendant in not paying the said debt at the time when the same ought to have been paid, according to the form and effect of an act of assembly of the Commonwealth of Pennsylvania in such case made and provided, and have you those moneys before our judges, at Philadelphia, at our said circuit court of the United States for the eastern district of Pennsylvania, there to be held, on the first Monday of April next, to render unto the said plaintiff for the debt, interest, and costs aforesaid, whereof the said defendant is convict, as appears of record, &c.; and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice
128 of the Supreme Court of the United States, at Philadelphia, this tenth day of March, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth.

[SEAL.] SAMUEL BELL, *Clerk.*

(Endorsed.)

To the honorable the judges within named I do certify that in obedience to the within writ, after having given due and legal notice of the time and place of sale by advertisements in the public newspapers and hand-bills put up in the most public places in my bailiwick, I did on Monday, the third day of April, A. D. 1893, at 12 m., at the United States marshal's office, third floor, post-office building, corner of Ninth and Chestnut street-, in the city of Philadelphia, expose the premises within described to sale by public vendue or outcry, and sold the same in five lots or parcels to M. K. L. Black, per R. C. McMurtrie, as follows: No. L, being No. 13th in the writ, for five hundred dollars; No. 2, being No. 8 in the writ, for five hundred dollars; No. 3, being No. 17 in the writ, for one hundred dollars; No. 4, being 1 to 7, inclusive, and Nos. 15 and 16 for two thousand dollars, and No. 5, being 9 to 12 and 14 in the writ, for

twenty-five hundred dollars, together aggregating five thousand six hundred dollars, she being the highest and best bidder, and that the best price bidden for the same; which money I have now ready before the judges within named to render, as by the said writ
129 I am commanded.

So answers—

ALEX. P. COLESBERRY, *Marshal.*

No. 1. Oct. sess., 1892. C. C. U. S., E. D. of Pa. Black *vs.* Black. *Pl's levari facias.* Real debt, $31,341.80; int. from Ap. 12, '92 —; att'y w't and serv., $30; clerk, $22.75; *lev. fa.*, $2.40; *als. fa.*, $2.40; *pl's fa.*, $2.40. McMurtrie. Filed Apr. 3, 1893.

130 Copy.

C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

To the honorable the judges of the ——:

The petition of Mary M. Black, the defendant in the above case and administratrix of Edgar N. Black, deceased, respectfully represents that a United States marshal's sale in the above case is fixed for Monday, April 3rd, A. D. 1893, at 12 o'clock.

That the land is very valuable, and if sold as advertised to be sold, before the question of jurisdiction is determined, great and irreparable injury will be done, and your petitioner, who is a widow, and her four children, one of whom is a minor, would be left destitute.

The property at the said sale would never bring anything like its price; it would be sacrificed.

That "The Solicitors' Loan and Trust Co." have complied
131 with the decision made by Hon. George M. Dallas, and are competent to go security.

That your petitioner humbly prays your honorable court to make an order to stay the said sale until the matter of appeal can be determined.

And your petitioner will ever so pray.

(Signed) MARY M. BLACK.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss.:*

Mary M. Black, being duly affirmed according to law, depose and says that the facts set forth in the above petition are true to the best of deponent's information, knowledge, and belief.

(Signed) MARY M. BLACK.

Affirmed and subscribed to before me this third day of April, A. D. 1893.

[SEAL.] ANDREW ZANE,
Notary Public.

[Endorsed:] Copy. Black *vs.* Black. Oct. sess., 1891. C. C. U. S., E. D. of Penn. No. 191. Petition of Mary M. Black to stay sale until the matter of appeal is determined. April 3, 1893. This petition being presented this day after eleven o'clock, the court, no proper notice to opposing counsel having been given, decline- to entertain it at this time. By the court: Geo. M. Dallas, C. J. Filed April 3, 1893. Francis Tracy Tobin, Wm. W. Ker, att'ys *pro* defendant.

132 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia*, } *ss:*

Francis Tracy Tobin, Esq., being duly sworn according to law, depose- and says that on April 3rd, A. D. 1893, deponent gave notice to the United States marshal and the public of filing the bond of security in the above case surwrit of error in the sum of eight thousand dollars ($8,000). A copy of same is annexed hereto, marked Exhibit "A."

(Signed) FRANCIS TRACY TOBIN.

Sworn and subscribed to before me this 3rd day of April, A. D. 1893.

[SEAL.] GEO. W. REED,
Notary Public.

133 C. C. U. S., E. D. of Penna.

BLACK *vs.* BLACK. } Oct. Sess., 1891. No. 191.

APRIL 3, 1893.

Notice to U. S. marshal, E. D. of Penna., & the public:

I give notice that the bond of $8,000 has been filed. The court made order in April, 1892, that if the writ of error was to act as a supersedeas the bond would be in the sum of $8,000.

C. C. U. S., E. D. of Penna.

BLACK
vs.
BLACK. } In Equity. Oct. Sess., 1892. No. 47.

Appeal allowed by petition and security fixed in the sum of $5,000; bond for same filed.

FRANCIS TRACY TOBIN,
WM. W. KER,
Att'ys pro Mary M. Black.

(Endorsed:) Black *vs.* Black. Oct. sess., 1891. C. C. U. S., E. D. of Penna. No. 191. Notice to U. S. marshal and the public relative to sale. Filed Apr. 4, 1893. Francis Tracy Tobin, Wm. W. Ker, att'y- *pro* Mary M. Black.

134 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } Oct. Sess., 1891. No. 191.

The defendant comes and moves to set the rule aside in the above case and assigns the following reasons therefore:

First. Because the jurisdiction of the circuit court of the United States for the E. D. of Penn. to order the said sale is denied.

Second. Because the sale of the said property which lies in Delaware county ought to have been *sold* at the court-house in Delaware county, Pennsylvania.

Third. Because the United States marshal's office, 3rd floor,
135 post-office building, was not the proper place for the said sale.

Fourth. Because there were no bidders for the said property but counsel for plaintiff, excepting for one tract (number four), and for the four tracts counsel for the plaintiff made the only bids.

Fifth. Because the said property was knocked down to counsel for plaintiff at a nominal sum and nothing like its real value, and if properly sold would bring over one hundred thousand dollars ($100,000) over and above all incumbrances.

Sixth. Because the said property is very valuable and at the United States marshal's sale it was sacrificed and the best possible price was not gotten for the same.

Seventh. Because the price for which the said property was sold was inadequate.

Eighth. Because the said United States marshal's sale was not properly or legally advertised.

136 Ninth. Because the laws were not complied with.

Tenth. Because there — errors in the United States marshal's bill and the same did not agree with the mortgages for which the said property was sold, and the term and number of the case *was* wrong.

Eleventh. Because the said property was not sold according to the mortgage.

Twelfth. Because the said property ought to have been sold to bring the best price for all parties.

Thirteenth. Because the properties were so arranged as to confuse and mislead a purchaser, excepting the plaintiff, greatly to the injury of the defendant, who is a widow, and her children, one of whom is a minor.

Fourteenth. Because bond for security in the sum of eight thousand dollars ($8,000) surwrit of error had been filed — clerk's office of the C. C. U. S., E. D. of Penn., before the said sale, which
137 bond was a supersedeas, and notice of the same given at the sale.

Fifteenth. Because the rights and equities of the defendants, one of whom is a minor, have been greatly injured.

(Signed) MARY M. BLACK.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

Mary M. Black, the defendant in the above case and administratrix of Edgar N. Black, deceased, being duly affirmed according to law, depose- and says that the facts set forth above are true, to the best of deponent's knowledge, information, and belief.

(Signed) MARY M. BLACK.

Affirmed and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
[SEAL.] *Notary Public.*

Copy.

138 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

E. Tracy Tobin, being duly sworn according to law, depose- and says that deponent attended the United States marshal's sale in the above case, held Monday, April 3rd, A. D. 1893.

That Richard C. McMurtrie, Esq., was the only bidder at the said sale, excepting on tract "number four."

(Signed) E. TRACY TOBIN.

Sworn and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

Copy.

139 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

Daniel N. Black, being duly sworn according to law, depose- and says that deponent attended the United States marshal's sale in the above case, held Monday, April 3rd, A. D. 1893.

That Richard C. McMurtrie, Esq., was the only bidder at the said sale, excepting on tract "number four."

(Signed) DANIEL N. BLACK.

Sworn and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

Copy.

140 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

Mary M. Black, being duly affirmed according to law, depose- and says that at the United States marshal's sale on April 3rd, A. D. 1893, in the above case, Richard C. McMurtrie, Esq., bought the said

property for the following sums: "number one," five hundred dollars ($500); "number two," five hundred dollars ($500); "number three" ($100); "number four," two thousand dollars ($2,000); "number five," two thousand five hundred dollars ($2,500), making the sum total for all of the said property five thousand six
141 hundred dollars ($5,600).

(Signed) MARY M. BLACK.

Affirmed and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
[SEAL.] *Notary Public.*

Copy.

142 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

E. Tracy Tobin, being duly sworn according to law, depose- and says:

That deponent attended United States marshal's sale in the above case, held Monday, April 3rd, A. D. 1893.

The following persons were all who deponent saw present at the said sale: R. C. McMurtrie, Esq., John Rogers, a person the deponent thinks by the name of Bohlen, D. N. Black, L. L. Smith, Esq., J. H. Brinton, Esq., —— Stevenson, Francis Tracy Tobin, Esq., E. Tracy Tobin, United States Marshal Alexander P. Colesberry, Esq., Deputy United States Marshal Marple, Deputy United States
143 Marshal Myers, Deputy United States Marshal Hunt, Peoples Bros., —— Hill, and two other persons unknown to deponent.

E. TRACY TOBIN.

Sworn and subscribed to before me this 10th day of April, A. D. 1893.

[SEAL.] GEO. W. REED,
Notary Public.

144 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and Citizen of the State of Pennsylvania.
Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

S. A. Hamilton, real-estate broker during the past twenty years, being duly sworn according to law, depose- and says that deponent is familiar with the property as sold at United States marshal's sale on April 3rd, A. D. 1893; that said property is very valuable and is worth, in deponent's judgment, three hundred and twenty-five thousand dollars ($325,000); that the said property was sacrificed at the price paid for the same at said United States marshal's
145 sale, five thousand six hundred dollars ($5,600), over incumbrance of about one hundred and fifty thousand dollars ($150,000).

S. A. HAMILTON.

Sworn and subscribed to before me this tenth day of April, A. D 1893.

[SEAL.] GEO. W. REED,
Notary Public.

146 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

Wm. Jenks Rell, a real-estate broker over fifteen years, being duly sworn according to law, depose- and says that deponent is familiar with the property as sold at United States marshal's sale on April 3rd, A. D. 1893; that said property is very valuable and is worth, in deponent's judgment, three hundred and twenty-five thousand dollars ($325,000); that the said property was sacrificed at the price paid for the same at said United States marshal's sale, five
147 thousand six hundred dollars ($5,600) over incumbrances of about one hundred and fifty thousand dollars ($150,000).

WM. JENKS RELL.

Sworn and subscribed to before me this tenth day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

148 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Delaware,* } *ss:*

M. M. Childs, of Wilmington, Del., real-estate broker for the last 25 years, being duly sworn according to law, depose- and says that deponent is familiar with the property as sold at United States marshal's sale on April 3rd, A. D. 1893; that the property is very valuable, and in deponent's judgment is worth three hundred and twenty-five thousand dollars ($325,000); that the said prop-
149 erty was sacrificed at the price paid for the same at the said United States marshal's sale, five thousand six hundred dollars ($5,600) over incumbrance of about one hundred and fifty thousand dollars ($150,000).

M. M. CHILDS.

Sworn and subscribed to before me this tenth day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

150 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

Daniel N. Black, being duly sworn according to law, depose- and says that the first United States marshal's bills for the sale on April 3rd, 1893, were not posted until March 17th, A. D. 1893, and others were again posted subsequent to that date.

——.

Sworn and subscribed to before me this — day of April, A. D. 1893.

——.

151 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1893. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia*, } *ss:*

Mary C. Black, being duly sworn according to law, depose- and says that the first United States marshal's bills for the sale on April 3rd, A. D. 1893, were not posted until March 17th, A. D. 1893, and others were again posted subsequent to that date.

—— ——.

Sworn and subscribed to before me this — day of April, A. D. 1893.

—— ——.

152 C. C. U. S., E. D. of Penn.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Delaware*, } *ss:*

J. Alfred Howard, being duly affirmed according to law, depose- and says:

That a copy of sheriff's bill for the sale of real estate is always posted in the sheriff's office at least ten days before the date of sale.

That no copy of United States marshal's bill for sale in the above case was posted in the sheriff's office for Del. Co., Pennsylvania, until Tuesday, March 28, 1893.

J. ALFRED HOWARD,
Deputy Sheriff.

Affirmed and subscribed to before me this 10th day of April, A. D. 1893.

[SEAL.] W. T. MATHEWS, *Proth'y.*

153 (Copy.)

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

U. S. Marshal's Sale.

By virtue of a pluries writ of *levari facias*, issued out of the circuit court of the United States in and for the eastern district of Pennsylvania, to me directed, will be sold at public vendue or outcry, on Monday, April 3rd, 1893, at 12 o'clock noon, at the United States marshal's office, third floor, Post-office building, corner Ninth and Chestnut streets, Philadelphia, as the property of Edgar N. Black, dec'd, the following-described property, situate partly in Delaware county and partly in Twenty-seventh ward, Philadelphia:

No. 1 (being No. 13 in the writ). An undivided third of the upper part of Hog island (now called Black's island), on the Delaware river, below Fort Mifflin, Delaware county, containing, according to a recent survey, 382 acres, more or less,

Subject to following mortgages, which also includes Nos. 8 to 12 in writ:

$11,000, dated January 1st, 1876.
$10,000, dated October 30th, 1876.
$10,000, dated May 30th, 1877.

No. 2 (being No. 8 in the writ). The lower part of said Hog (or Black's) island, containing 93 acres, more or less,

Subject to following mortgages, which also includes Nos. 9 to 17, inclusive, in writ:

$5,000, dated October 1st, 1867.
$18,300, dated February 14th, 1874.
$10,000, dated May 30th, 1877.

No. 3 (being No. 17 in writ). A tract of land known as "Martin's bar," on the Delaware river, in Delaware county, which lies next below Hog island, divided from it by the back channel, now banked in, and includes the property formerly the "Bingham" property, on the northerly side of the back channel—the two tracts, by a recent survey, contain 270 acres 2 roods 28 perches—

Subject to the following mortgages, which also includes No. 8 to 16, inclusive, in writ:

$18,300, dated February 14th, 1874.
$10,000, dated May 30th, 1877;

And also a mortgage for $6,000 (reduced to $4,800) on the property formerly the "Bingham estate," dated February 3rd, 1873, recorded in Mortgage Book R No. 2, page 558, held by the Pennsylvania Company for Insurance on Lives, etc.

No. 5 (being Nos. 1 to 7, inclusive, 15 and 16 in the writ). A tract

of land situate on the Fort Mifflin road, leading from Penrose Ferry bridge and on the back channel, in the Twenty-seventh ward, Philadelphia, containing, by a recent survey, 135 acres 2 roods 12 perches,

Subject to the following mortgages:

$10,000, dated December 22nd, 1862, on parcels Nos. 1 to 7, inclusive; and also mortgages of $18,300, February 14th, 1870, which includes Nos. 8 and 17.

No. 5 (being Nos. 9 to 12, inclusive, and No. 14 in the writ). A tract of land situate in Delaware county, adjoining Martin's bar to the west and south, and part thereof fronting on the Delaware river, containing, according to recent surveys, 114 acres, more or less,

Subject to the following mortgages, which also includes Nos. 8, 13, and 17:

$11,000, dated January 1st, 1876.

$6,180.49, dated August 1st, 1876.

$10,000, dated May 30, 1877.

The above-recited incumbrances amount in the aggregate to $75,270.49, together with interest.

For further information apply to R. C. McMurtrie, attorney for plaintiff, 228 Bullitt building, Philadelphia. Black *vs.* Black. C. C. U. S., Oct. term, 1892. No. 1.

ALEXANDER P. COLESBERRY,
U. S. Marshal.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

T. R. Vernon, being duly affirmed according to law, depose- and says that he is connected with the Delaware County Ameri-
154 can, a weekly newspaper published in Media, Delaware county, State of Pennsylvania, and that an advertisement, of which the above is a copy, was published in said newspaper once a week for three successive weeks, to wit, on the 15th of March, 22nd of March, and the 29th of March, 1893.

(Signed) THOS. R. VERNON.

Affirmed and subscribed to before me this 10th day of April, A. D. 1893.

A. P. OTTEY,
Notary Public.

[SEAL.]

Copy.

155 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

U. S. Marschalls Verkauf — Kraft eines Alias Writ of Levari Facias, erlassen von der Circuit Court der Vereinigten Staaten in und für den östlichen Distrikt von Pennsylvania, an mich gerichtet werden auf öffentlichem Verkauf oder Auktion am **Montag den 3. April 1893 um 12 Uhr Mittags** in der Office des Vereinigten Staaten Marschalls im dritten Stock des Postoffice-Gebäudes, Ecke der Neunten und Chestnut Straße, Philadelphia, als das Eigenthum des verstorbenen Edgar M. Black das nachstehend beschriebene Grundeigenthum, gelegen zum Theil in Delaware County und zum Theil in der Siebenundzwanzigsten Ward von Philadelphia verkauft werden.

No. 1. (No. 13 in dem Writ). Ein ungetheiltes Drittel des oberen Theiles von Hog Island (jetzt genannt Black's Island) am Delaware Fluß unterhalb Fort Mifflin in Delaware County, enthaltend nach der neuesten Vermessung 382 Acres mehr oder weniger, belastet mit den folgenden Hypotheken, worin auch die Nos. 8 und 12 im Writ eingeschlossen sind:

$11,000, datirt vom 1. Januar 1876.
$10,000, datirt vom 30. Oktober 1876.
$10,000, datirt vom 30. Mai 1877.

No. 2. (Dies ist No. 8 im Writ). Der untere Theil des besagten Hog oder Black's Island, enthaltend 93 Acres mehr oder weniger.

Belastet mit den folgenden Hypotheken, worin auch die Nos. 9 und 17 eingeschlossen sind:

$5000, datirt vom 1. Oktober 1867.
$18,300, datirt vom 14. Februar 1874.
$10,000, datirt vom 30. Mai 1877.

No. 3. (Dies ist No. 17 im Writ). Ein Landstrich, welcher unter dem Namen „Martins Bar" bekannt ist, am Delaware Fluß in Delaware County, welches zunächst unterhalb Hog Island liegt und von diesem durch den hinteren Kanal (Back Channel), der jetzt eingedämmt ist, getrennt wird und das Grundeigenthum einschließt, welches früher das „Bingham" Property hieß, auf der nördlichen Seite des Back Channel. Die beiden Landstriche enthalten nach einer kürzlichen Vermessung 270 Acres, 2 Roods und 8 Perches.

Belastet mit den nachstehenden Hypotheken, worin auch die Nos. 8 bis einschließlich 16 im Writ eingeschlossen sind:

$18,300, datirt vom 14. Februar 1874.
$10,000, datirt vom 30. Mai 1877.

Und außerdem eine Hypothek von $9000, (reduzirt auf $4800) auf das Grundeigenthum, das früher zum Bingham Estate gehörte, datirt vom 3. Februar 1873, eingetragen in das Hypothekenbuch R No 2, Seite 558, welche sich im Besitz der Pennsylvania Company für Insurances of Lives &c befindet.

No. 5 (dies ist No. 1 bis 7 einschließlich, 15 und 16 im Writ) Ein Grundstück, gelegen an der Fort Mifflin Road, welche von der Pennrose Ferry Brücke führt, am Back Channel in der Siebenundzwanzigsten Ward von Philadelphia, enthaltend nach der letzten Vermessung 135 Acres, 2 Roods, 2 Perches.

Belastet durch folgende Hypotheken:

$10,000, datirt vom 22. Dezember 1862 auf die Parzellen No. 1 bis 7 einschließlich. Und ferner Hypothek von

$18,300 vom 14. Februar 1874, (welche einschließt Nos. 8 und 17.)

No. 5. (Dies ist No. 9 bis 12 einschließlich und No. 14 im Writ) Ein Grundstück, gelegen in Delaware County, angrenzend westlich und südlich an Martins Bar und ein Theil desselben an den Delaware Fluß grenzend, nach der neuesten Vermessung enthaltend 114 Acres, mehr oder weniger.

Belastet mit den folgenden Hypotheken, worin auch Nos. 8, 13 und 17 eingeschlossen sind.

$11,000, datirt den 1. Januar 1876.
$6180.49, datirt den 1. August 1876.
$10,000, datirt den 3. Mai 1877.

Die oben angeführten Belastungen betragen im Ganzen $75,280.49 nebst Zinsen.

Wegen weiterer Auskunft wende man sich an

R. E. McMurtrie,
Anwalt des Klägers,
288 Bullitt Building, Philadelphia.

Black vs. Black, C. C. U. S., Oct. Term. 1891. No. 191.

Alexander B. Coleberry,
Ver. St. Marschall,
Oestlicher Distrikt von Pennsylvania.

155 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

V. St. Marschalls Verkauf — Kraft eines Alias Writ of Levari Facias, erlassen von der Circuit Court der Vereinigten Staaten in und für den östlichen Distrikt von Pennsylvania, an mich gerichtet werden auf öffentlichem Verkauf oder Auktion am **Montag** den 3. April 1893 um 12 Uhr Mittags in der Office des Vereinigten Staaten Marschalls im dritten Stock des Postoffice-Gebäudes, Ecke der Neunten und Chestnut Straße, Philadelphia, als das Eigenthum des verstorbenen Edgar R. Black das nachstehend beschriebene Grundeigenthum, gelegen zum Theil in Delaware County und zum Theil in der Siebenundzwanzigsten Ward von Philadelphia verkauft werden.

No. 1. (No. 13 in dem Writ). Ein ungetheiltes Drittel des oberen Theiles von Hog Island (jetzt genannt Blacks Island) am Delaware Fluß unterhalb Fort Mifflin in Delaware County, enthaltend nach der neuesten Vermessung 382 Acres mehr oder weniger, belastet mit den folgenden Hypotheken, worin auch die Nos. 8 und 12 im Writ eingeschlossen sind:

$11,000, datirt vom 1. Januar 1876.
$10,000, datirt vom 30. Oktober 1876.
$10,000, datirt vom 30. Mai 1877.

No. 2. (Dies ist No. 8 im Writ). Der untere Theil des besagten Hog oder Blacks Island, enthaltend 93 Acres mehr oder weniger.

Belastet mit den folgenden Hypotheken, worin auch die Nos. 9 und 17 eingeschlossen sind:

$5000, datirt vom 1. Oktober 1867.
$18,300, datirt vom 14. Februar 1874.
$10,000, datirt vom 30 Mai 1877.

No. 3. (Dies ist No. 17 im Writ). Ein Landstrich, welcher unter dem Namen «Martins Bar» bekannt ist, am Delaware Fluß in Delaware County, welches zunächst unterhalb Hog Island liegt und von diesem durch den hinteren Kanal (Back Channel), der jetzt eingedammt ist, getrennt wird und das Grundeigenthum einschließt, welches früher das «Bingham» Property hieß, auf der nördlichen Seite des Back Channel. Die beiden Landstriche enthalten nach einer kürzlichen Vermessung 270 Acres, 2 Roods und 8 Perches.

Belastet mit den nachstehenden Hypotheken, worin auch die Nos. 8 bis einschließlich 16 im Writ eingeschlossen sind:

$18,300, datirt vom 14. Februar 1874.
$10,000, datirt vom 30. Mai 1877.

Und außerdem eine Hypothek von $9000, (reduzirt auf $4800) auf das Grundeigenthum, das früher zum Bingham Estate gehörte, datirt vom 3. Februar 1873, eingetragen in das Hypothekenbuch R No 2, Seite 558, welche sich im Besitz der Pennsylvania Company für Insurances of Lives &c befindet.

No. 5 (dies ist No. 1 bis 7 einschließlich, 15 und 16 im Writ) Ein Grundstück, gelegen an der Fort Mifflin Road, welche von der Pennrose Ferry Brücke führt, am Back Channel in der Siebenundzwanzigsten Ward von Philadelphia, enthaltend nach der letzten Vermessung 135 Acres, 2 Roods, 2 Perches.

Belastet durch folgende Hypotheken:

$10,000, datirt vom 22. Dezember 1862 auf die Parzellen No. 1 bis 7 einschließlich. Und ferner Hypothek von

$18,300 vom 14. Februar 1874, (welche einschließt Nos. 8 und 17.)

No. 5. (Dies ist No. 9 bis 12 einschließlich und No. 14 im Writ) Ein Grundstück, gelegen in Delaware County, angrenzend westlich und südlich an Martins Bar und ein Theil desselben an den Delaware Fluß grenzend, nach der neuesten Vermessung enthaltend 114 Acres, mehr oder weniger.

Belastet mit den folgenden Hypotheken, worin auch Nos. 8, 13 und 17 eingeschlossen sind.

$11,000, datirt den 1. Januar 1876.
$6180.49, datirt den 1. August 1876.
$10,000, datirt den 3. Mai 1877.

Die oben angeführten Belastungen betragen im Ganzen $75,280.49 nebst Zinsen.

Wegen weiterer Auskunft wende man sich an

R. E. McMurtrie,
Anwalt des Klägers,
288 Bullitt Building, Philadelphia.

Black vs. Black, C. C. U. S., Okt. Term. 1891. No. 191.

Alexander P. Colesberry,
Ver. St. Marschall,
Oestlicher Distrikt von Pennsylvania.

156 Charles Hannig, being duly sworn according to law, deposeand says that he is connected with the Phila. Abend Post, a daily German newspaper published in the city of Philadelphia, and that an advertisement, of which the above is a copy, was published in said newspaper (on the 15th of March, A. D. 1893), once only, to wit, on the 15th of March, A D. 1893.

(Signed) CHAS. HANNIG.

Sworn and subscribed to before me this 12th day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

Copy.

157 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

U. S. Marshal's Sale.

By virtue of a pluries writ of *lev. fa.*, issued out of the circuit court of the United States in and for the eastern district of Pennsylvania, to me directed, will be sold at public vendue or outcry, Monday, April 3d, 1893, at 12 o'clock noon, at the United States marshal's office, 3rd floor, Post-office building, cor. Ninth and Chestnut streets, Philadelphia, as the property of Edgar N. Black, deceased, the following-described property, situate partly in Delaware county and partly in Twenty-seventh ward, Philadelphia:

1 (being No. 13 in the writ). An undivided third of the upper part of Hog island (now called Black's island), on the Delaware river, below Fort Mifflin, Delaware county, containing, according to a recent survey, 382 acres, more or less,

Subject to following mortgages, which also includes Nos. 8 to 12 in writ:

$11,000, dated January 1, 1876.
$10,000, dated October 30, 1876.
$10,000, dated May 30, 1877.

2 (being No. 8 in the writ). The lower part of said Hog (or Black's) island, containing 93 acres, more or less,

Subject to following mortgages, which also includes Nos. 9 to 17, inclusive, in writ:

$5,000, dated October 1, 1867.
$18,300, dated February 14, 1874.
$10,000, dated May 30, 1877.

3 (being No. 17 in writ). A tract of land known as "Martin's bar," on the Delaware river, in Delaware county, which lies next below

Hog island, divided from it by the back channel, now banked in, and includes the property formerly the "Bingham" property, on the northerly side of the back channel—the two tracts, by a recent survey, contain 270 acres 2 roods 28 perches—

Subject to the following mortgages, which also includes Nos. 8 to 16, inclusive, in writ:

$18,300, dated February 14, 1874.

$10,000, dated May 30, 1877;

And also a mortgage for $6,000 (reduced to $4,800) on the property formerly the "Bingham estate," dated February 3, 1873, recorded in Mortgage Book R No. 2, page 558, held by the Pennsylvania Company for Insurances on Lives, etc.

4 (being Nos. 1 to 7, inclusive, 15 and 16 in the writ). A tract of land situate on the Fort Mifflin road, leading from Penrose Ferry bridge, and on the back channel, in the Twenty-seventh ward, Philadelphia, containing, by a recent survey, 135 acres 2 roods 12 perches,

Subject to the following mortgages:

$10,000, dated December 22, 1862, on parcels Nos. 1 to 7, inclusive; and also mortgage of $18,300, February 14, 1874, which includes Nos. 8 and 17.

5 (being Nos. 9 to 12, inclusive, and No. 14 in the writ). A tract of land situate in Delaware county, adjoining Martin's bar to the west and south, and part thereof fronting on the Delaware river, containing, according to recent surveys, 114 acres, more or less,

Subject to the following mortgages, which also includes Nos. 8, 13, and 17.

$11,000, dated January 1, 1876.

$6,180.49, dated August 1, 1876.

$10,000, dated May 30, 1877.

The above-recited incumbrances amount in the aggregate to $75,280.49, together with interest.

For further information apply to R. C. McMurtrie, attorney for plaintiff, 288 Bullitt building, Philadelphia. Black *vs.* Black. C. C. U. S., Oct. term, 1892. No. 1.

ALEXANDER P. COLESBERRY,
U. S. Marshal, E. D. of Pa.

Mar. 17 — 3 t.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

A. T. Markley, being duly sworn according to law, depose- and says that he is connected with "The Legal Intelligence," a
158 weekly newspaper published in Media, Delaware county, State of Pennsylvania, and that an advertisement, of which the above is a copy, was published in said newspaper once a week for 3 successive weeks, to wit, on the 17th, 24th, & 31st of March, 1893.

(Signed) A. T. MARKLEY.

Sworn and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

Copy.

159 Copy.

C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } Oct. Sess., 1891.

STATE OF PENNSYLVANIA, *County of Delaware,* } *ss:*

W. L. Mathews, proth'y, being duly affirmed according to law, depose- and says that no record of above-entitled case has been filed in this office by the clerk of the C. C. of the U. S. for the E. D. of Pennsylvania.

(Signed) W. L. MATHEWS, *Proth'y.*

Affirmed and subscribed to before me this 10th day of April, A. D. 1893.

JOHN H. KERLIN,
[SEAL.] *Recorder of Deeds.*

160 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania. } Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Delaware,* } *ss:*

John H. Kerlin, recorder, being duly affirmed according to law, depose- and says that no record of above-entitled case has been filed in this office by the clerk of the C. C. of the U. S. for the E. D. of Pennsylvania.

JOHN H. KERLIN, *Recorder.*

Affirmed and subscribed to before me this 10th day of April, A. D. 1893.

[SEAL.] W. L. MATHEWS, *Proth'y.*

161 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

Francis Tracy Tobin, being duly sworn according to law, deposeand says that on Saturday, April 1st, A. D. 1893, in the C. C. of the U. S. for the E. D. of Penn., deponent gave Richard C. McMurtrie, Esq., verbal notice to be in the said court or court of appeals on Monday, April 3rd, A. D. 1893.

Notice was mailed to said Richard McMurtrie, Esq., on April 2nd, A. D. 1893.

Also written and verbal notice was given to Richard McMurtrie, Esq., on April 3rd, A. D. 1893.

Annexed hereto, marked Exhibit "A," is a copy of the
162 said notice given to the said Richard C. McMurtrie, Esq.

FRANCIS TRACY TOBIN.

Sworn and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

163 EXHIBIT "A."

Copy.

U. S. Court.

BLACK
vs.
BLACK.

PHILA., *April* 1, 1893.

R. C. McMurtrie, Esq.

DEAR SIR: I do hereby notify you to be in the U. S. C. court and U. S. court of appeals Monday morning next (April 3rd), at 10 o'clock, as I have several motions and applications to make in the above case.

Yours respectfully,

WM. W. KER,
Per F. T. T.,
Att'y pro Defendant.

Copy.

164 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.

Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

E. Tracy Tobin, being duly sworn according to law, depose- and says that on April 2nd, A. D. 1893, deponent mailed notice to Richard C. McMurtrie, Esq.; copy of same is annexed hereto, marked Exhibit "A."

E. TRACY TOBIN.

Sworn and subscribed to before me this 10th day of April, A. D. 1893.

GEO. W. REED,
Notary Public.

[SEAL.]

165 EXHIBIT "A."

Copy.

U. S. Court.

BLACK
vs.
BLACK.

PHILA., *April* 1, 1893.

R. C. McMurtrie, Esq.

DEAR SIR: I do hereby notify you to be in the U. S. C. court and U. S. court of appeals Monday morning next (April 3rd), at 10 o'clock, as I have several motions and applications to make in the above case.

Yours respectfully,

WM. W. KER,
Per F. T. T.,
Att'y per Defendant.

Copy.

166 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

Francis Tracy Tobin, being duly sworn according to law, depose- and says that deponent, on April 3rd, A. D. 1893, at 11.30 a. m., filed bond of security (or bail) surwrit of error in above case in the sum of eight thousand dollars ($8,000) in the clerk's office of the C. C. of the U. S. for the eastern district of Penn.

FRANCIS TRACY TOBIN.

Sworn and subscribed to before me this 10th of April, A. D. 1893.
[SEAL.] GEO. W. REED,
Notary Public.

167 C. C. U. S., E. D. of Pennsylvania.

MARY K. L. BLACK, a Citizen of the State of New York,
vs.
MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.
} Oct. Sess., 1891. No. 191.

STATE OF PENNSYLVANIA, *County of Philadelphia,* } *ss:*

E. Tracy Tobin, being duly sworn according to law, depose- and says that deponent was present and saw Francis Tracy Tobin, Esq., on April 3rd, A. D. 1893, at 11.30 a. m., file bond of security (or bail) surwrit of error in above case in the sum of eight thousand dollars ($8,000) in the clerk's office of the C. C. of the U. S. for the E. D. of Penn.

E. TRACY TOBIN.

Sworn and subscribed to before me this 10th of April, A. D. 1893.
[SEAL.] GEO. W. REED,
Notary Public.

168 [Endorsed:] Copy. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Oct sess., 1891. C. C. U. S., E. D. of Penn. No. 191. Affidavits in sup-

port of motion and reasons for rule to set sale aside. Filed April 13, 1893. Copy. Francis Tracy Tobin, Wm. W. Ker, att'ys *pro* defendant.

169 EASTERN DISTRICT OF PENNSYLVANIA, *ss*:

Thos. Marple, dep. U. S. marshal, being duly sworn, deposes and says that the advertisement of the marshal's sale of property sold under a pluries writ of *levari facias*, issued out of the circuit court of the United States in and for the eastern district of Pennsylvania in the case of Black *vs.* Black, No. 1, Oct. term, 1892, was inserted in the North American and Evening Bulletin, published in the city of Philadelphia, and the Chester Times, published in the city of Chester, Delaware county, on the 11th, 18th, and 25th of March, A. D. 1893, and once a week for three weeks prior to the sale, in the Legal Intelligencer and the Delaware County American, both weekly papers, and once in the Abend Post, a German paper, published in Philadelphia.

THOS. MARPLE.

Sworn and subscribed before me this 13th day of April, A. D. 1893.

SAMUEL BELL,
U. S. Com'r.

(Endorsed:) No. 191. Oct'r, 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black. Affidavit of deputy U. S. marshal as to advertisement of sale. Filed Apr. 13, 1893.

170 THURSDAY, *April 13th*, 1893.

The court is opened pursuant to adjournment.
Present: Hon. George M. Dallas, circuit judge.

BLACK
vs.
BLACK, Adm'x, &c. } No. 191. October Sess., 1891.

Surmotion for rule to set aside sale.
Mr. Tobin, Mr. Ker, for; Mr. McMurtrie, *contra*.
Motion denied.

171 C. C. U. S., E. D. of Penn.

BLACK
vs.
BLACK. } Oct. Sess., 1891. No. 191.

The defendant comes, by her attorneys objects to the acknowledgement of the deed or deeds of the United States marshal in the said case, and assigns the following reasons therefore, to wit:

First. That the court has no jurisdiction in this matter.

Second. That the laws of the State of Pennsylvania and the United States have not been complied with in the above case.

Third. That a bond for $8,000 was filed with the clerk of the

circuit court of the United States, E. D. of Penn., before the sale in the said case or security surwrit of error, which bond acted as a supersedeas. The trial judge in the said case ordered that if the writ of error was to act as a supersedeas it was to be in the sum of $8,000, which is the sum of the said bond as filed, and notice of same was given to the United States marshal and the public.

Fourth. That a petition of Mary M. Black, the defendant in the above case, asking for relief, was presented in the Supreme Court of the United States, in open court, on Friday, April 14th, A. D. 1893, and the said petition is now being considered by the said Supreme Court of the United States.

FRANCIS TRACY TOBIN,
WM. W. KER,
Per F. T. T.,
Att'ys for Defendant.

Endorsed: Oct. sess., 1891. C. C. U. S., E. D. of Penn. No. 191. Black *vs.* Black. Objection to acknowledgement of deed or deeds by U. S. marshal and reasons for same. Filed April 15, 1893. Francis Tracy Tobin, Wm. W. Ker, att'ys for defendant.

172 C. C. U. S., E. D. Penna.

BLACK
vs. } Oct. Sess., 1891. No. 191.
BLACK.

Motion for rule to show cause why bond of Solicitors' Loan and Trust Co., not approved in above case, should not be returned to the said company for cancellation.

RICHARD S. HUNTER,
For S. L. & T. CO.

Endorsed: No. 191. Oct. sess., 1891. C. C. U. S., E. D. of Pa. Black *vs.* Black. Motion for rule to show cause why bond of Solicitors' Loan and Trust Co. should not be returned to said company for cancellation. Filed April 22, 1893.

173 Know all men by these presents that we, Mary M. Black, administratrix of Edgar N. Black, deceased, as principal, and Francis Tracy Tobin, as surety, are held and firmly bound unto Mary K. L. Black in the full and just sum of two hundred and fifty dollars, to be paid to the said Mary K. L. Black, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at a circuit court of the United States for the eastern district of Pennsylvania, in a suit depending in said court between Mary K. L. Black, plaintiff, and Mary M. Black, administratrix of Edgar N. Black, deceased, defendant, a judgment was ren-

dered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary K. L. Black, citing and admonishing her to be and appear at Supreme Court of the United States to be holden at Washington, within thirty days:

Now, the condition of the above obligation is such that if the said Mary M. Black, administratrix of Edgar N. Black, deceased, shall prosecute said writ to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

MARY M. BLACK, [SEAL.]
Administratrix of Edgar N. Black, Dec'd,
By att'y, FRANCIS TRACY TOBIN. [SEAL.]
FRANCIS TRACY TOBIN. [SEAL.]

Sealed and delivered in presence of—
JAMES D. MAHER.

Approved by—
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

174 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Mary K. L. Black *vs.* Mary M. Black, administratrix of Edgar N. Black, deceased, No. 191, October session, 1891, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

175 [Endorsed:] No. 191. Oct. sessions, 1891. Circuit court United States, eastern district of Pennsylvania. Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Certified copy. Francis Tracy Tobin, Wm. W. Ker, F. Carroll Brewster, att'ys *pro* defendant.

176 Supreme Court of the United States, October Term, 1892.

MARY K. L. BLACK, a Citizen of the State of New York, *vs.* MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania.	C. C. U. S., E. D. of Pennsylvania. October Sess., 1891. No. 191.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

The petition of Mary M. Black, the defendant in the above case and administratrix of Edgar N. Black, deceased, and a citizen of the State of Pennsylvania, respectfully represents—

That on January 2nd, A. D. 1892, a *sci. fa.* surmortgage issued out of the C. C. U. S., E. D. of Pennsylvania, of October sess., 1891, against Mary M. Black, the administratrix of Edgar N. Black,
177 deceased, on a mortgage given by Edgar N. Black to Mary K. L. Black (the wife of Charles N. Black, now deceased), plaintiff in the above case, on certain lands in Philadelphia and Delaware counties, State of Pennsylvania. On January 27th, 1892, *alias sci. fa.* issued.

The said mortgage was dated the 19th day of August, A. D. 1887, and recorded in Philadelphia and Delaware counties, Pennsylvania. The said mortgage provides for fourteen *scire facias*, and there was only one *sci. fa.* issued on said mortgage.

That the defendant in the above case is the administratrix and widow of Edgar N. Black, deceased, who died on the 15th day of April, A. D. 1891, in Tinicum township, Delaware county, Pennsylvania.

The said Edgar N. Black, deceased, died intestate, and letters of administration were granted to your petitioner by the register of wills for Delaware county, Pennsylvania, on the 25th day of April, A. D. 1891.

The said Edgar N. Black, deceased, left surviving him your petitioner, who is his widow, and four children, one of whom is a minor.

That your petitioner, by her attorneys, Francis Tracy Tobin and Wm. W. Ker, Esqrs., raised the question of jurisdiction and denied the same in the above case; that the jurisdiction of the United States court is common-law jurisdiction, and a *scire facias* sur-
178 mortgage is a statutory remedy under the act of 1705 of the State of Pennsylvania and peculiar to the said State, and the said action belongs to the State courts of the State of Pennsylvania, and the said plaintiff would have obtained all possible redress in the courts of Philadelphia and Delaware counties.

That Honorable Joseph Hemphill, judge of Chester county, Pennsylvania, acting as judge of Delaware county, Pennsylvania, issued an injunction to restrain the plaintiff from bringing the said case in the United States court and to institute the same in the courts of Delaware county, Pennsylvania; that the United States had no jurisdiction, and that it belonged to the State. This injunction was

served upon the plaintiff by E. Tracy Tobin, but no attention was paid to the same. This injunction was not against the United States court, which the State courts would have no right to issue, but against the individual.

That, notwithstanding the said objection, the said court proceeded to trial and judgment. Judgment was secured and entered against the defendant in the sum of $31,341.80.

That the trial judge made an order if the writ of error surappeal was to act as a supersedeas, bail was to be in the sum of $8,000; and if not, then in the sum of $1,000.

179 That your petitioner entered bail on the 30th day of January, A. D. 1893, in the sum of $8,000, offering "the Solicitors' Loan and Trust Company" as her surety.

The said company is incorporated and authorized under the laws of the State of Pennsylvania to go security, and has been accepted several times in the C. C. U. S., E. D. of Pennsylvania, as security, and the said company has been offered as security by R. C. McMurtrie, Esq.

That the said company has complied with the laws of this Commonwealth (Pennsylvania) and has a paid-up capital of $500,000 and a surplus fund of $250,000; that the par value of its capital stock is $50 per share and the market value of the same is $69 and upwards, and this corporation pays a dividend of .06 per cent. per annum. This company is accepted as surety in all the courts of this Commonwealth, and it has been accepted by the circuit court of the United States upon a bond of $30,000.

That attorney for plaintiff in above case, R. C. McMurtrie, Esq., objected to the said company going security, as the stockholders of the said company had not authorized them to do so.

His honor Judge George M. Dallas sustained the objection.

180 That since the said ruling of Judge Dallas the said stockholders of the said company have met and authorized the said company to go security, and by so doing the said objection has been removed and the said company is competent to go security.

That a *pluries la. fa.* was issued for the sale of the said property on April 3rd, A. D. 1893, by the U. S. marshal for the E. D. of Penn., on third floor of Post-office building.

That motion to stay the sale wss made on April 3rd, A. D. 1893, when the aforesaid security was offered, the court refusing to entertain motion or hear argument owing to absence of attorney for plaintiff, although 48 hours' notice was given, as required.

That the said bond of $8,000 surwrit of error, which was a supersedeas, was filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania at 11.30 a. m. on said day (April 3rd, A. D. 1893, and the said sale was fixed for the said day, April 3rd, A. D. 1893, at 12 o'clock). Although filed, the said clerk refused to place it on record. Notwithstanding filing of said bond, which was a supersedeas, the said sale proceeded and the said property was knocked down to attorney for plaintiff for the sum of $5,600 over and above incumbrances, which are about $150,000.

The said property was sacrificed.

The said property was not sold or advertised according to
181 the laws of the United States or of the State of Pennsylvania, and a wrong term and number were published in the writ; that the description of the said property in the said writ of *pl. la. fa.* was not correct and did not agree with the said mortgages.

That proper or legal notice of sale was not given.

That the property was not sold for the best price.

That the property is very valuable and consists of over 750 acres of land in Philadelphia and Delaware counties, Pennsylvania, situated on the Delaware river front, and is worth not less than $325,000, and at a proper sale would bring over $100,000, over and above incumbrances; that if the said sale is allowed to stand the rights and equities of the defendants will be greatly injured, one of whom is a minor.

That the properties were so arranged in the writ and advertisement of the plaintiff as to mislead and confuse a purchaser, and as a result of the same the plaintiff was able to buy in the said property very cheap, and thereby worked a fraud upon your petitioner and took advantage of your petitioner's helpless condition, which the plaintiff knew, as also plaintiff's attorney.

That if the deed or deeds of sale are confirmed and acknowledged the plaintiff would be put in possession and great and irreparable injury would be done to the defendant, who is poor and without means to defend her rights and title, and your petitioner
182 would be left destitute and helpless, together with her children, one of whom is a minor.

That the deed or deeds of sale of the U. S. marshal were not presented to the C. C. U. S., E. D. of Penn. on Saturday, April 15th, A. D. 1893, for confirmation and acknowledgment, but went over until Saturday, April 22, A. D. 1893.

That on April 13th, A. D. 1893, a motion was made and argued to show cause why the said sale should not be set aside, the said motion refused, and rule discharged.

That the said price paid for the property was grossly inadequate.

That if the said sale is allowed to stand the creditors of the estate of Edgar N. Black, deceased, cannot be paid.

That there are parties willing to pay more for the properties if an opportunity be granted.

That a deed of trust was signed by your petitioner and the heirs of Edgar N. Black, deceased, to certain parties upon condition that a United States marshal's sale of the property would not take place, they having represented that they had arranged the matter with R. C. McMurtrie, Esq., attorney for plaintiff, and, notwithstanding the same, the said parties did not live up to the terms of the deed of trust, and without notice to your petitioner allowed the sale
183 to take place; that the said parties have been cited to appear in the orphans' court of Philadelphia county; that by the said sale a great wrong and fraud has been perpetrated upon your petitioner and her children, one of whom is a minor.

Your petitioner humbly prays your honorable court to grant a

writ of error and such other remedial redress as your honors may see fit to grant.

And your petitioner will ever so pray.

MARY M. BLACK,
Adm'x of Edgar N. Black, Dec'd.

FRANCIS TRACY TOBIN,
WM. W. KER,
F. CARROLL BREWSTER,
Attorneys pro Petitioner.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

Mary M. Black, the defendant in the above case and administratrix of Edgar N. Black, deceased, being duly affirmed according to law, depose and says that the facts set forth in the above petition are true, to the best of deponent's knowledge, information, and belief.

184 MARY M. BLACK.

Affirmed and subscribed to before me this nineteenth day of April, A. D. 1893.

[Seal of Geo. W. Reed, Notary Public, Philadelphia.]

GEO. W. REED,
Notary Public.

185 [Endorsed:] Mary K. L. Black, a citizen of the State of New York, *vs.* Mary M. Black, administratrix of Edgar N. Black and a citizen of the State of Pennsylvania. Oct. sess., 1891. C. C. U. S., E. D. of Pennsylvania. No. 191. Petition of Mary M. Black for writ of error, &c. Francis Tracy Tobin, Wm. W. Ker, F. Carroll Brewster, att'ys *pro* petitioner.

186 Supreme Court of the United States.

MARY M. BLACK, Administratrix of Edgar N. Black and a Citizen of the State of Pennsylvania, Appellant,
vs.
MARY K. L. BLACK, a Citizen of the State of New York. Appellee.

Oct. Sess., 1892. No. —.

Assignment of Errors.

First. The court below had no jurisdiction in the said case.

Second. The court below erred in taking jurisdiction on a *sci. fa.* surmortgage which belongs to the State courts of Pennsylvania.

Third. The court below erred in hearing a *sci. fa.* surmortgage.

187 Fourth. The court below erred in not quashing the writ of *sci. fa.* surmortgage

Fifth. The court below erred in not accepting the security when offered and approving the same.

Sixth. The court below erred in refusing to hear defendant's (appellant's) petition on the day of the sale.

Seventh. The court below erred in allowing the sale to take place when it was shown that the State laws (Pennsylvania) had not been complied with in relation to advertising, posting, &c., &c.

Eighth. The court below erred in allowing the sale when there were errors in the descriptions and the properties so arranged by the plaintiff (appellee) and plaintiff's attorney (appellee's attorney) as to mislead and confuse a purchaser other than the plaintiff (appellee).

188 Ninth. The court below erred in allowing the sale to take place when the laws of the United States where not complied with.

Tenth. The court below erred in not setting the sale aside for the above reasons—*id est*, jurisdiction, advertising, posting, description, recording, &c., &c.

Eleventh. The court below erred in allowing the plaintiff (appellee) to benefit by the said fraud, and to buy the property for an inadequate price.

April 26th, A. D. 1893.

FRANCIS TRACY TOBIN,
Att'y for Appellant.

189 [Endorsed:] Case No. 15,314. Supreme Court U. S., October term, 1893. Term No., 933. Mary M. Black, adm'x, &c., P. E., *vs.* Mary K. L. Black. Assignment of errors. Filed May 31, 1893.

Endorsed on cover: Case No. 15,314. E. Pennsylvania C. C. U. S. Term No., 233. Mary M. Black, administratrix of Edgar N. Black, deceased, plaintiff in error, *vs.* Mary K. L. Black. Filed May 2nd, 1893.

Fifth. The court below erred in not accepting the security when offered and approving the same.

Sixth. The court below erred in refusing to hear defendant's (appellant's) petition on the day of the sale.

Seventh. The court below erred in allowing the sale to take place when it was shown that the State laws (Pennsylvania) had not been complied with in relation to advertising, posting, &c., &c.

Eighth. The court below erred in allowing the sale when there were errors in the descriptions and the properties so arranged by the plaintiff (appellee) and plaintiff's attorney (appellee's attorney) as to mislead and confuse a purchaser other than the plaintiff (appellee).

188 Ninth. The court below erred in allowing the sale to take place when the laws of the United States where not complied with.

Tenth. The court below erred in not setting the sale aside for the above reasons—*id est*, jurisdiction, advertising, posting, description, recording, &c., &c.

Eleventh. The court below erred in allowing the plaintiff (appellee) to benefit by the said fraud, and to buy the property for an inadequate price.

April 26th, A. D. 1893.

FRANCIS TRACY TOBIN,
Atty for Appellant.

189 [Endorsed:] Case No. 15,314. Supreme Court U. S., October Term, 1893. Term No. 233. Mary M. Black, adm'x, &c., P. E., *vs.* Mary K. L. Black. Assignment of errors. Filed May 31, 1893.

Endorsed on cover: Case No. 15,314. E. Pennsylvania C. C. U. S. Term No. 233. Mary M. Black, administratrix of Edgar N. Black, deceased, plaintiff in error, *vs.* Mary K. L. Black. Filed May 2nd, 1893.

Office Supreme Court U. S.
FILED.
MAR 31 1896
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1895, No. 233.

MARY M. BLACK, ADMINISTRATRIX OF EDGAR N. BLACK, DECEASED, PLAINTIFF IN ERROR AND DEFENDANT BELOW,

vs.

MARY K. L. BLACK, DEFENDANT IN ERROR AND PLAINTIFF BELOW.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFF IN ERROR.

FRANCIS TRACY TOBIN,
HENRY BUDD,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1895, No. 233.

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I. HISTORY OF THE CASE.

Edgar N. Black and Charles N. Black were brothers associated together in sheep raising—which was not their proper business, and in which they were not successful. They both being lawyers. After the death of Charles N. Black, a mortgage was executed by Edgar N. Black to Mary K. L. Black, the widow and executrix of Charles N. Black, upon certain property situated in Philadelphia and Delaware Counties, in the State of Pennsylvania, the said mortgage bearing date August 19, 1887.

Upon this mortgage a writ called a *scire facias* sur mortgage was, at the suit of Mary K. L. Black, described in the præcipe as a citizen of the State of New York, on January 5, 1892, issued at law out of the Clerk's Office of the United States Circuit Court for the Eastern District of Pennsylvania, Mary M. Black, the administratrix of Edgar N. Black, being made defendant. To this writ a return of *nihil habet* was made An *alias* writ was then issued, February 1, 1892, which was returned "made known." In the affidavit of defense, the defendant set up that the Circuit Court, sitting as a court of law, had no jurisdiction of an action of *scire facias* sur mortgage, and other defenses which for the purposes of this appeal, limited to the question of jurisdiction, have become immaterial, but which appear in the record filed in this case. This was followed by a motion to quash the writ, and the rule granted upon the motion was discharged. The defendant then pleaded under protest. The case went to trial, before a jury, a verdict was given for the plaintiff

and judgment was entered on the verdict. On April 28, 1892, the Circuit Court fixed as security for the writ of error, $8,000, if the writ were to be a supersedeas, $1,000 if it were not to act as such. On January 30, 1893, the plaintiff in error offered as bail in error, in the sum of $8,000, The Solicitors Loan and Trust Company, of Philadelphia. DALLAS, J., refused to approve the said company as security, expressly on the ground that while the directors of said company had accepted the provisions of an Act of Assembly of Pennsylvania, May 9, 1889, P. L. 159, permitting corporations of the class to which the Solicitors Company belonged, to act as surety upon a writ of error or appeal, there had been no acceptance of said act by the stockholders of said company. Any objection to the pecuniary sufficiency of the surety was expressly disclaimed by the defendant in error. (See Record, printed page 83). After this time the stockholders of the Solicitors Company held a meeting at which they accepted the provisions of the Act of May 9, 1889, P. L. 159. In the meantime, execution had issued, and the day of sale was fixed for April 3, 1893, at 12 M., at the Marshal's office, on the third floor of the Post Office Building, Philadelphia, notwithstanding efforts made by the plaintiff in error to have the land lying in Delaware County sold in that County. Before the hour of sale, plaintiff again offered the bond, claiming that the objection to it sustained by the Court, had now been removed. The bond, however, was refused by the clerk, who refused to place it on record, although it was presented to the clerk in open Court and left with him. The sale then proceeded, and the property was sacrificed, being bought in by the defendant in error. A writ of error was allowed April 27, 1893, and on the next day was lodged in the Clerk's Office of the Circuit Court for the Eastern District of Pennsylvania, before the acknowledgment of the deed from the Marshall to the defendant in error.

II. The Statute of the Commonwealth of Pennsylvania, under which the Circuit Court proceeded.

An Act for Taking Lands in Execution for Payment of Debts.

I. To the end that no creditors may be defrauded of their just debts, due to them from persons who have sufficent real, if not personal, estates to satisfy the same. Be it enacted, That all such lands, tenements and hereditaments whatsoever, within this province, where no sufficient personal estate can be found, shall be liable to be seized and sold, upon judgment and execution obtained.

II. *Provided* always, That when any debt is hereafter recovered, and damages awarded, or when any debt is acknowledged before such as have, or shall have, power to take cognizance thereof, and executions awarded thereupon, to be levied upon the lands, tenements or hereditaments, of any person or persons whatsoever, it shall not be lawful for any sheriff or other officer, by virtue of such executions, or of any writ or writs thereupon, to sell, or expose to sale, any such lands, tenements or hereditaments, in this province, which shall or may yield yearly rents or

profits beyond all reprizes, sufficient within the space of seven years, to pay or satisfy such debts or damages, with costs of suit; but that all those lands, tenements and hereditaments, shall, by virtue of the writ or writs of execution, be delivered to the party obtaining the same, until the debt or damages be levied by a reasonable extent, in the same manner and method as lands are delivered upon writs of *elegits* in England.

III. *Provided*, nevertheless, that if the clear profits of such lands or tenements shall not be found, by inquest of twelve men, to be sufficient within seven years, to satisfy the debt or damages in such executions; or if, before the extent be out, any other debts or damages shall be recovered against the same debtor or defendant, his heirs, executors or administrators, which, with what remains due upon such extent, cannot all be satisfied out of the yearly profits of the lands or tenements so extended within seven years, then, and in every such case, the sheriff or other officer shall accordingly certify the same upon the return of such executions; whereupon writ or writs of *venditioni exponas* shall issue forth, to sell such lands and tenements, for and towards satisfaction of what shall so remain due upon such extent, as also towards satisfaction of all the rest of the said debts or damages, in manner as is hereinafter directed concerning the sale of other lands.

IV. And be it further enacted, That it shall and may be lawful for the sheriff, or other officer, by a writ of *levari facias*, to seize and take all other lands, tenements and hereditaments in execution, and thereupon, with all convenient speed, either with or without any writ of *venditioni exponas*, to make public sale thereof, for the most they will yield, and pay the price or value of the same to the party, towards satisfaction of his debt, damages and costs. But before any such sale be made, the sheriff, or other officer,

shall cause so many writings to be made, upon parchment or good paper, as the debtor or defendant shall reasonably desire or request, or so many, without such request, as may be sufficient to signify and give notice of such sales or vendues, and of the day and hour when, and the place where, the same will be, and what lands or tenements are to be sold, and where they lie; which notice shall be given to the defendant, and the said parchments or papers fixed by the sheriff, or other officer, in the most public places of the county or city, at least ten days before the sale; and upon such sale the sheriff or other officer shall make return thereof, indorsed or annexed to the said *levari facias*, and give the buyer a deed, duly executed and acknowledged in Court, for what is sold, as has been heretofore used upon the Sheriff's sale of lands. But in case the said lands and hereditaments so to be exposed, cannot be sold, then the officer shall make return upon the writ, that he exposed such lands or tenements to sale, and the same remained in his hands unsold, for want of buyers; which return shall not make the officer liable to answer the debt or damages contained in such writ, but a writ called *liberari facias*, shall forthwith be awarded and directed to the officer, commanding him to deliver to the party such part or parts of those lands, tenements and hereditaments, as shall satisfy his debt, damages and interest from the time of the judgment given, with cost of suit, according to the valuation of twelve men; to hold to him as his free tenement, in satisfaction of his debt, damages and costs, or so much thereof as those lands by the valuation thereof, as aforesaid, shall amount unto. And if it fall short, the party may afterwards have execution for the residue against the defendant's body, lands or goods, as the laws of this province shall direct and appoint from time to time, concerning other executions. All which said lands, tenements, hereditaments and premises, so as aforesaid to be sold or delivered by the sheriff or officer aforesaid, with all their appurtenances, shall or may be

quietly or peaceably held and enjoyed by the person or persons, or bodies politic to whom the same shall be sold or delivered, and by his and their heirs, successors or assigns, as fully and amply, and for such estate and estates, and under such rents and services, as he or they, for whose debt or duty the same shall be so sold or delivered, might, could, or ought to do, at or before the taking thereof in execution.

V. *Provided* always, That the messuage, lands or tenements, upon which the defendant is chiefly seated, shall not be exposed to sale before the expiration of one whole year after judgment is given, to the intent that the defendant, or any other for him, may redeem the same.

VI. And forasmuch as divers persons have mortgaged their lands and tenements in this province, for securing the payment of monies, and some of them have died before the time of payment, and left others to succeed them, that have proved insolvent, and others have neglected to pay the mortgage money, and so mortgages have become no effectual security, considering how low the annual profits of tenements and improved lands are here, and the discouragements which the mortgagees meet with, by reason of the equity of redemption remaining in the mortgagers.

Be it, therefore, enacted, That where default or defaults have been made or shall be made or suffered, by any mortgagor or mortgagors, of any lands, tenements or other hereditaments within this province, or by his, her, or their heirs, executors, administrators and assigns, of or in payment of the mortgage money, or performance of the condition or conditions, which they, or any of them, should have paid or performed, or ought to pay or perform, in such manner and form, and according to the purport, tenor and effect of the respective provisoes, conditions or covenants, comprised in

their deeds of mortgage or defeasance, and at the days, times, and places, in the same deeds respectively mentioned and contained; that in every such case it shall and may be lawful to and for the mortgagee or mortgagees, and him, her or them, that grant the said deeds of defeasance, and his, her and their heirs, executors, administrators or assigns, at any time after the expiration of twelve months, next ensuing the last day whereon the said mortgage money ought to be paid, or other conditions performed as aforesaid, to sue forth a writ or writs of *scire facias*, which the Clerk of the Court of Common Pleas for the county or city where the said mortgaged lands or hereditaments lie, [and he] is hereby empowered and required to make out and despatch, directed to the proper officer, requiring him, by honest and lawful men of the neighborhood, to make known to the mortgagor or mortgagors, his, her, or their heirs, executors or administrators, that he or they be and appear before the magistrates, judges or justices of the said Court or Courts to show, if anything he or they have to say, wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage money, with interest, or to satisfy the damages, which the plaintiff in such *scire facias* shall, upon the record, suggest for the breach or non-performance of said conditions.

And if the defendant in such *scire facias* appear, he or she may plead satisfaction or payment of part or all the mortgage money, or any other lawful plea, in avoidance of the deed or debt, as the case may require: But if the defendants in such *scire facias* will not appear on the day whereon the same writ shall be made returnable, then, if the case be such as damages only are to be recovered, an inquest shall be forthwith charged to inquire thereof, and the definitive judgment therein, as well as all other judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in the *scire facias* shall have execution by *levari*

facias, directed to the proper officer; by virtue whereof the said mortgaged premises shall be taken in execution, and exposed to sale in manner aforesaid; and upon sale, conveyed to the buyer or buyers thereof, and the money or price of the same rendered to the mortgagee or creditor; but for want of buyers, to be delivered to the mortgagee or creditor in manner and form as is hereinabove directed concerning other lands and hereditaments, to be sold or delivered upon executions for other debts or damages.

And when the said lands and hereditaments shall be so sold and delivered as aforesaid, the person or persons to whom they shall be so sold or delivered, shall and may hold and enjoy the same, with their appurtenances, for such estate or estates as they were sold or delivered clearly discharged and freed from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagors, their heirs or assigns; and such sales shall be available in law, and the respective vendees, mortgagees or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid, but before such sales made, notice shall be given in writing, in manner and forms as hereinabove directed, concerning the sales of lands upon executions, any law or usage to the contrary notwithstanding.

VII. *Provided* also, That when any of the said lands, tenements or hereditaments, which by the direction and authority of this Act are to be sold for the payment of debts and damages, in manner aforesaid, shall be sold for more than will satisfy the same debts or damages, and reasonable costs, then the Sheriff or other officer, who shall make the sale, must render the surplus to the debtor or defendant and then, and not before, the said officer shall be discharged thereof upon record in the same Court where he shall make return of his proceedings concerning the said sales.

VIII. *Provided* also, That no sale or delivery, which shall be made by virtue of this Act, shall be extended to create any further term or estate to the vendees, mortgagees or creditors, than the lands or hereditaments so sold or delivered shall appear to be mortgaged for, by the said respective mortgagor or defeasible deeds.

IX. *Provided* also, That if any of the said judgments, which do or shall warrant the awarding of the said writs of executions, whereupon any lands, tenements or hereditaments, have been or shall be sold, shall, at any time hereafter be reversed for any error or errors, then, and in every such case, none of the said lands, tenements or hereditaments, so as aforesaid taken or sold, or to be taken or sold upon executions, nor any part thereof, shall be restored, nor the Sheriff's sale or delivery thereof avoided, but restitution in such cases, only of the money or price for which such lands were or shall be sold.

Passed, 1705. Recorded A, Vol. I, 199

Laws of the Commonwealth of Pennsylvania, Bioren, Vol. I, (1810) pp. 57, 58, 59, 60, 61.

III. ARGUMENT.

The question involved in this case is whether the Circuit Court of the United States, sitting as a court of law, has jurisdiction in what is known in Pennsylvania as a *scire facias* sur mortgage—not whether a mortgage can be foreclosed or otherwise enforced in a federal court in Pennsylvania, but whether the peculiar form of procedure, which exists nowhere else than in Pennsylvania, and which grew out of the peculiar exigencies of the Pennsylvania legal system, is one which a suitor in a federal court is permitted to employ in place of the modes of procedure well and authoritatively recognized in said court. This is not a mere matter of form, as it will be seen by an examination of the peculiar local procedure, that the rights of a defendant are very different under it, and under either the ordinary common law or equitable proceeding.

We may start with the two principles which have been so often enforced in this Court that they may, for all practical purposes, be considered as axioms:

1. The jurisdiction of the courts of the United States and the method of its exercise therein depend solely on the Constitution and the Acts of Congress made in accordance therewith.

2. No state legislation can, of and by itself, either confer jurisdiction or take it away from the federal courts.

What jurisdiction then has the Constitution conferred upon the United States courts, and in what way has it been ordained that it shall be exercised?

When the Federal Convention was brought face to face with the question of conferring judicial power upon the new government and of providing for its exercise, two systems were open for adoption, both of which were in active operation at the time, one the English system, in which rights and remedies were distinguished into two classes, legal and equitable, administered according to different rules and by different tribunals—the other the system of the civil law, which prevailed on the continent. in which there was no division of rights into classes, and according to which, the same tribunal disposed of both, what would be called in England, legal rights and equitable rights. The Convention, composed of men used to the English system and having it clearly before their eyes, adopted it with all its distinctions between law and equity, and conferred judicial power on the United States, to be exercised in the same general way and subject to the same general rules which prevailed in England, in Art. III, Sec. 2, Cl. 1, of the Constitution. "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof and foreign States, citizens and subjects."

With the exception of the Supreme Court, the Constitution erected no tribunal, but empowered Congress to create all inferior tribunals and to define their jurisdiction. Congress, accordingly, by the Act of 29th September, 1789, vested the original subordinate jurisdiction in Circuit

Courts of the United States, and followed, as, indeed, it was bound to do, the distinction between law and equity. It is true, it did not create tribunals of different names, and presided over by different judges, to administer on the one hand law and the other equity; but it provided for the distinction of both in right and remedy—and, for all practical purposes, the Circuit Court, sitting in equity is a court distinct from, and independent of, the Circuit Court sitting at law, governed by different principles, and using different remedies.

This we find fully established by the authorities. An intermixture of law and equity has always been rigidly frowned upon and prohibited, and all adoptions of State practice have been subject to the important qualification that equitable rights and remedies must be kept distinct.

In Robinson v. Campbell, 3 Wheat. 214 (1818). an action of ejectment was brought in the United States Court for East Tennessee, and it was sought to set up by way of defense an equitable title, which the laws of Tennessee recognized as equally valid with a legal title. This Court, speaking by TODD, J., (p. 221, et seq.) said:

"The Act of May, 1792, confirms the modes of proceeding then used in suits at common law in the courts of the United States, and declares that the modes of proceeding in suits in equity shall be 'according to the principles, rules and usages which belong to courts of equity as contra-distinguished from courts of common law' except so far as may have been provided for by the Act to establish the judicial courts of the United States. It is material to consider whether it was the intention of Congress, by these provisions, to confine the courts of the United States in their mode of administering relief to the same remedies, and those only, with all their incidents

which existed in the Courts of the respective States. In other words, whether it was their intention to give the party relief at law, where the practice of the State Courts would give it; and relief in equity only, when according to such practice, a plain, adequate and complete remedy could not be had at law. In some States in the Union, no Court of Chancery exists to administer equitable relief. In some of those States, courts of law recognize and enforce, *in suits at law, all the equitable claims and rights* which a court of equity would recognize and enforce; in others, all relief is denied, and such equitable claims and rights are to be considered as mere nullities at law. A construction, therefore, that would adopt the State practice in all its extent, would at once extinguish, in such States, the exercise of equitable jurisdiction. The Acts of Congress have distinguished between remedies at common law and in equity, yet this construction would confound them. The Court, therefore, think, that to effectuate the purposes of the legislature, the remedies of the courts of the United States are to be at common law or in equity, not according to the practice of the State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of those principles."

Robinson v. Campbell may be considered the leading case upon the maintenance of the distinction between law and equity, both in principle and in the administration of remedial justice, and, in accordance with rule laid down in it, and following the principles of the decision, we find that the Supreme Court has consistently held that an action at law cannot be made the means of the enforcement of an equitable right, although the law of the State in which the United States Court is sitting, and over whose territory its jurisdiction extends, has ordained that in its courts such may be the case, and has even provided a special method or

action, either at law or of a mixed character, for enforcing such right.

In **Fenn v. Holmes, 21 How. 481, (1858)**, an action of ejectment was brought, in the Circuit Court for Missouri, upon an equitable title and a recovery was allowed, because ejectment upon an equitable title was allowed in the courts of Missouri. The case coming upon writ of error into the Supreme Court, the judgment of the Circuit Court was reversed. DANIEL, J., who delivered the judgment of the Court, saying, in the course of the opinion, (p. 488): "A practice has prevailed in some of the States (and among them the State of Missouri), of permitting the action of ejectment to be maintained upon warrants for land and upon other titles, not complete or legal in their character; but this practice, as was so explicitly ruled in the case of Bennet *v.* Butterworth (11 How.), can in no wise affect the jurisdiction of the courts of the United States who, both by the Constitution and by the Acts of Congress, are required to observe the distinction between legal and equitable rights, and to enforce the rules and principles of decision appropriate to each."

This decision has been abundantly followed. In **Hooper v. Scheimer, 23 How. 235 (1860)**, an action of ejectment was brought upon an equitable title in the Circuit Court for Arkansas, the plaintiff relying on a statute of the State of Arkansas allowing such an action to be brought. It was held that it could not be maintained in a federal court.

In **Scheirbrun v. DeCordova, 24 How. 423 (1861)**, an action of trespass to try a title, was brought in the United States Court for Texas the title set up being an equitable one. CAMPBELL, J., in delivering the opinion of the Supreme Court said: (p. 425) "By a statute of Texas, all certificates for head rights, land scrip, bounty warrants or

any other evidence of right to land, recognized by the laws of this government, which have been located or surveyed, shall be deemed and held a sufficient title to authorize the maintainance of actions of ejectment, trespass, or any other legal remedy given by law." Hart Dig., Art. 3230. "The testimony adduced by the plaintiff, it would seem, would have authorized a suit in the courts of Texas, where rights, whether legal or equitable, are disposed of in the same suit. But this court has established, after full consideration, that in the courts of the United States, suits for the recovery of land can only be maintained upon a legal title."

In **Clagett v. Kilbourn, 1 Black, 346 (1862)**, NELSON, J., said, at p. 350: "It is proper to add, even if an equitable title had been acquired, it would not have helped him, as it will not sustain an ejectment in the federal courts."

In **Brobst v. Brock, 10 Wall. 519 (1870)**, a case coming into the Supreme Court for the Eastern District of Pennsylvania, STRONG, J., in delivering the opinion of the Court, said: at p. 530 "It is true that in the State Courts of Pennsylvania ejectments may be maintained upon an equitable title, but such has never been the rule in the federal courts."

We have also cases showing the converse of the above position namely, that the federal courts will not permit equitable proceedings to be made the means of enforcing merely legal rights, even in states where all distinctions between law and equity in respect to the enforcement of such rights do not exist.

In **Hipp v. Balin, 19 How. 271 (1887)**, a bill was filed in the Circuit Court for Louisiana to recover land; no question of jurisdiction was raised by the

parties, but the bill was dismissed *suo sponte* by the Court, on the ground of lack of jurisdiction. On appeal it was argued (see p. 275), that as in Louisiana the distinction between courts of law and equity was unknown, all remedies being both in form and substance equitable, and as courts of equity refused to decide upon legal titles and in all cases in which there was an adequate remedy at law, because such cases were properly triable by a jury; the reason for refusing jurisdiction in equity did not apply to the Circuit Court in Louisiana, because trial by jury was not respected in that State and was only allowed on application of one of the parties. The Supreme Court, however, affirmed the action of the lower Court in refusing to take jurisdiction. CAMPBELL, J., in the course of his opinion, poinied out (p. 278) that in Parsons *v.* Bedford, 3 Pet. 433, the court had insisted on the necessity of maintaining the distinction between the jurisdiction in cases of legal rights and those in which equitable rights were to be enforced, even in Louisiana.

In **Lewis v. Cocks, 23 Wall. 466**, also a Louisiana case, a bill to set aside a judicial sale which alleged only the nullity of the judgment under which the sale took place, was sustained by the Court below, but reversed for want of jurisdiction on appeal.

Besides the applications of the distinction above set forth the decisions of the Supreme Court have most emphatically declared against the blending of law and equity in one action.

The leading case on this subject is **Bennett v. Butterworth, 11 How. 669** (1850). A suit was brought in the United States Court in Texas to recover certain negroes. The jury found $1,200 as the value of the negroes. The plaintiff released the verdict for $1,200, and judgment was given that he recover the negroes. This was perfectly

regular under the Texas rule of procedure. The judgment of the lower court was, nevertheless, reversed. TANEY, C. J, saying: "Whatever may be the laws of Texas on this subject, they do not govern the proceedings in the courts of the United States. And although the forms of proceedings and practice in the state courts have been adopted in the District Court, yet the adoption of the state practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit."

See also **McFaul v. Ramsay, 20 How. 522.**

Thompson v. Railway Co., 6 Wall. 135.

All of the above cited cases arose prior to the Act of June 1, 1872, R. S. 914, which provides as follows: "The practice, pleading and forms and modes of proceeding in civil cases, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleading and forms and modes of proceeding existing at the time in like causes in the courts of record of the state, within which such circuit or district courts are held, any rule of court to the contrary notwithstanding."

Extensive as this Act is and notwithstanding the variety of practice which it introduces on the law side of the Circuit Court, it does not, and cannot, authorize the enforcement of equity under common law forms, and it does not authorize the blending of legal and equitable causes of action, as is shown by the following cases arising and decided subsequent to the passage of the Act.

It is held that equitable defences cannot be interposed in an action at law, notwithstanding the law of the State within which the court is sitting, in **Northern Pacific R. R. v. Paine, 119 U. S. 561 (1887)**, FIELD, J., saying (p. 563) (after reciting the setting up an equitable defence in

the state court, from which the case was removed): "The case was then removed on application of the defendant from the state court to the Circuit Court of the United States. In that court the equitable defence could not be made available; in the courts of the United States to legal actions, legal defenses only can be interposed. If the defendant has equitable grounds for relief against the plaintiff he must seek to enforce them by a separate suit in equity."

See also **Burnes v. Scott, 117 U. S. 582** (1886).

Doe exd. Myrick v. Roe, 31 Fed. Rep. 97 (1887).

Montejo v. Owen, 14 Blatch. 324 (1877).

In **the City of Quincy v. Steel, 120 U. S. 241** (1887), a proceeding in equity was remanded to the Circuit Court with instructions to dismiss the bill; MILLER, J., saying (on p. 244) in the course of the opinion: "The other principle which it is necessary to override [*i. e.*, in order to sustain the proceeding] is that in the federal courts the distinction between actions at law and suits in equity has always been kept up."

In **Scott v. Armstrong, 146 U. S. 499**, FULLER, C. J., said (on p. 512): "The jurisprudence of the United States has always recognized the distinction between law and equity as, under the Constitution, *matter of substance* as well as form and procedure; and accordingly legal and equitable claims cannot be blended together in one suit in the Circuit Courts of the United States, nor are equitable defenses permitted."

The "blending of remedies" is declared to be not permissible in the Federal Courts in **Scott v. Neely, 140 U. S. 107** (1890), see also **Cates v. Allen, 149 U. S. 451** (1893), **Mills v. Cohn, 150 U. S. 209** (1893).

In **Hall v. Yahoola River Mining Co., 1, Woods, 544** (1873), WOODS, J., said (p. 547): "The distinction between law and equity, as recognized in the Constitution and the principles and procedure which, at the period of the formation of the Constitution, so clearly distinguished legal from equitable remedies, have not thus far in our judicial history been unseated by the blending of law and equity in the courts of the United States; they are still administered as distinct systems of remedial justice."

Not only may not a blending of remedies be allowed in the federal courts in their own process, but in them it is not permissible to use a remedy of a mixed character in place of the one appropriate under the federal practice, although such remedy may be permissible or even expressly ordained for use in the state courts.

This is decided by **Willard v. Wood, 135 U. S. 309** (1890). This was a case in error to the Supreme Court of the District of Columbia, in which the following facts appeared: One Dixon executed at Brooklyn, N. Y., a mortgage on land situated in the State of New York, and then conveyed the land to W.W. Wood, subject to the mortgage. The mortgagee assigned the mortgage to S. L. Christmas, who held it until his death. Wood paid a portion of the mortgage debt and then conveyed to one Bryan. Wood afterwards died and the administrator of Christmas brought an action at law against the executrix of Wood to recover the balance of the mortgage debt. Such an action would have been maintainable in a court of the State of New York. The parties agreed upon the facts by a case stated and the court of the District entered judgment for the defendant. It was held by the Supreme Court, affirming the court below, that as the case of the plaintiff was an equitable one he must seek relief by bill in equity. GRAY, J., saying: "The decisions of the Courts of New York, though proceeding upon various and not always consistent

reasons, clearly show that by the law of that State (in which the land is situated and the bond and mortgage as well as the subsequent deed from the mortgagor were executed and delivered) the mortgagee is entitled to maintain a suit either, in equity or at law, against the grantee of the mortgage to enforce the payment of the mortgage debt." (Citing cases) "Assuming that the mortgagee has acquired, by the law of New York, a right to enforce such an agreement against a grantee of the mortgagor, the form of his remedy, whether it must be in covenant or in assumpsit at law or in equity must be governed by the *lex fori*, the law of the District of Columbia, where the action was brought. Dixon *v.* Ramsay, 3 Cranch 319; United States Bank *v.* Donnally, 8 Pet. 361; Wilcox *v.* Hunt, 13 Pet. 378; LeRoy *v.* Beard, 8 How. 451; Pritchard *v.* Norton, 106 U. S. 124, 130, 133. . . . In the Supreme Court of the District of Columbia, as in the Circuit Courts of the United States, the jurisdiction in equity is distinct from the jurisdiction at law, and equitable relief cannot be granted in an action at law."

A case to the same effect, and which will be cited later as bearing also upon a different part of this argument, is **The American Freehold Loan and Mortgage Co. v. Thomas. 47 Fed. Rep. 550 (1891).**

We have then, at the present day, the law well settled to be, as it always has been, notwithstanding the Acts adopting State procedure and process, that the distinction between the principles of law and those of equity, and between the process of law and the process of equity, must be maintained in the courts of the United States; that, in those courts, law and equity have not been, are not, and cannot be blended, and that from them remedies of a mixed character, unknown to the common law and to the practice of the Court of Chancery, are rigorously excluded. True, state forms may be adopted, but the moment such a form

shows itself to be one in which law and equity are blended, or a mixture of legal and equitable remedies, it cannot enter the federal courts, because it is in nowise adapted or adaptable to the system of jurisprudence there administered. To quote Mr. Foster: "Although a great number of the States of the American Union, and even England itself, have fused together the two systems in the Courts of the United States, while the same judges have jurisdiction in each, the common law and equity are still as distinct as they were in the time of Coke and Bacon." Foster Fed. Pract., Sec. 4.

The next question is, what is meant by law as distinguished from equity in the Constitution and in the statutes of the United States?

The answer to this is found in many authorities. The Constitution did not adopt the common law of each State, and the process which had grown up under it, or had been created by statute in each State, and require the federal courts sitting in that State to conform to such law and to follow such process, no matter how far they trenched upon what were in 1789 and 1792 equitable principles or process. On the contrary, to define the difference between common law and equity, and to establish the line of demarcation between them, the Constitution and the federal courts looked to the law of England, from whence all the States represented in the Federal Convention had derived their jurisprudence. As said by MR. JUSTICE STORY, in his work on the Constitution, Sec. 1645, Vol. II, p. 451 (5th ed.) "It is observable that the language is the judicial power shall extend to all cases in law and equity arising under the Constitution, laws and treaties of the United States. What is to be understood by cases in law and equity in this clause? Plainly, cases at the common law are distinguishable from cases in equity according to the known distinctions in the jurisprudence of England, which

our ancestors brought with them upon their emigration, and with which all the American States were familiarly acquainted."

This is abundantly supported by decided authority.

In **Robinson v. Campbell, 3 Wheat. 214,** TODD, J., says at p. 222: "The Court, therefore, think that to effectuate the purposes of the Legislature, the remedies in the courts of the United States are to be at common law or equity, *not according to the practice of the state courts,* but according to the principles of common law and equity as distinguished and defined in that country from which we derive our knowledge of those principles." And in **Thompson v. R. R. Co., 6 Wall. 134,** DAVIS, J., in delivering the opinion of the Court, at p. 157, quotes as authoritatives the above words.

In **Mississippi Mills v. Cohn, 150 U. S. 202,** BREWER, J., says at p. 206: "The inquiry is rather, whether by the principles of common law and equity as distinguished and defined in this and the mother country at the time of the adoption of the Constitution of the United States, the relief here sought was one obtainable in a court of law or one which only a court of equity was fully competent to give."

In the very recent case of **Lindsay v. Shreveport Bank, 156 U. S. 485,** a national bank filed a petition on the law side of the Circuit Court for Louisiana, asking for a judgment declaring invalid an assessment by state officers of shares of its capital stock and prohibiting the collection of the tax. SHIRAS, J., delivering the opinion of the Supreme Court, said, at p. 493: "The case is thus brought within the rule, which the court has often had occasion to lay down, that the remedy in the courts of the United States are at common law and in equity, not according to

the practice of the state courts, but according to the principles of common law and equity as distinguished and defined in that country from which we derive our knowledge of those principles, and that although the forms of pleading and practice in the state courts have been adopted in the Circuit Courts of the United States, yet the adoption of the state practice must not be understood as confounding the principles of law and of equity, nor as authorizing legal and equitable causes to be blended together in one suit."

That the common law of England, and not that of the particular state within which the particular Federal Court is sitting, governs, is also shown by the long line of cases in which it has been decided that state enactments can neither confer jurisdiction upon federal courts in cases to which it does not extend by the Constitution, nor impair the jurisdiction where it does exist under that instrument; for example, the existence of a statutory remedy at law, given by the legislature of a State, cannot prevent the resort to equity in a case to which it extends under the general principles of the Court of Chancery, notwithstanding the rule that a clear, adequate and sufficient remedy at law will bar the interposition of equity. The remedy which in the United States courts will bar equity must be a remedy known to the common law of England.

U. S. v. Howland, 4 Wheat, 108 (1819).

Pratt v. Northam, 5 Mason, 95 (1828).

McConihay v. Wright, 121 U. S. 201 (1887).

Mississippi Mills v. Cohn 150 U. S. 209 (1893).

Ridings v. Johnson, 128 U. S. 212 (1888).

If then, the express enactment by the legislature of a

state cannot have any effect in altering the boundaries of legal and equitable jurisdiction and remedy in a federal court sitting within its territory, it follows that the common law or practice of such State cannot, whether that common law be regarded as based on old and forgotten statutes, or as springing up by consensus within a particular community. The United States have not, therefore, adopted the common law of any particular State, and least of all have they adopted as *law* in their courts the common law of Pennsylvania, for the excellent reason that the common law of that State, both in principle and practice, avowedly merges the common law of England and equity; and, so far as practice, procedure and remedy are concerned, the mixture and blending of law and equity were even more apparent in 1789 than they are now. In 1789 there was permitted in Pennsylvania no avowedly or distinctively equitable procedure whatever; while, since the Act of 1836, bills in equity are authorized by statute, and the courts of common law are given, expressly, certain equitable powers. But, notwithstanding the absence of equitable procedure, in 1789 equity existed in Pennsylvania as part of its common law, bound up with it, and administered through its forms entirely, as it is still at the present day, in great part.

The very first court of which we have any account in Pennsylvania, the Provincial Court, established in 1684, was a court of mixed jurisdiction, and proceeded upon the Pennsylvania mixed system. Governor Keith, about 1720, succeeded in establishing a Court of Chancery which lasted until 1736, since which time no separate Court of Chancery has existed, notwithstanding attempts made, notably in 1790, to establish such a tribunal. The expedient of a law side and an equity side of the same court did not occur to our ancestors, and as a consequence the principles of equity, which were always recognized, became so far mixed with and conjoined to the principles of common law as to become part of the same system and were adminis-

tered under the same forms. In other words, equity became part of the Pennsylvania common law, which was the child of the English common law and English equity; a child differing from each, but having the lineaments of each—as a child resembling both father and mother. As said by Mr. Laussat in his remarkable essay on "Equity in Pennsylvania," p. 42: "The jurisprudence of Pennsylvania is thus changed in a very important particular. Its foundation is not the common law of England, in its restricted sense, but the common law incorporated with equity, mitigated in every instance by the principles of the latter and thus adapted to the necessities of time and country. It is a new system of obligation, compounded of the two; capable with a few additions of uniting their excellencies, and administered by one tribunal."

And CHIEF JUSTICE SHARSWOOD in his address on the Common Law of Pennsylvania, before the Law Academy of Philadelphia, says: "Equity is part of the common Law of Pennsylvania."

The declarations of these two great jurists are fully supported by a line of authorities extending from a period antedating the Federal Constitution to the present day.

In 1787, in **Pollard v. Shaffer, 1 Dall. 210 [Penna. Repts.]** McKEAN, C. J., said (p. 213 et seq.): "The judges here are therefore to determine causes according to equity as well as the positive law; equity being a part of the law. . . . . Perhaps, however, the common law courts of England might think that they were bound by the strict rules of law, on account of the general express covenant, to determine against the defendant and that his relief must be in chancery, if anywhere, because of the established rules and boundaries of the jurisdiction of those courts. We must then consider the equity of the case and

determine upon all the circumstances thereof; for, although we have not the chancery forms or methods of carrying several equitable cases into execution, yet we may determine where we may according to equity as making a part of the law to prevent a failure of justice."

In 1793—**in Wikoff v. Coxe, 1 Yeates, 383** [**Penna. Repts.**]—the Court said, on page 388: "Unquestionably, equity is part of the law."

In 1802, in **The Attorney General v. The Grantees, 4 Dall. 237, [Penna. Repts**] which was the case of an issue to try title sunder an Act of Assembly of April 2, 1802. YEATES, J., said, in charging the jury (pp. 244–245): "Here we feel ourselves irresistibly impelled to mention a difficulty which strikes our minds favorably. Our reflections on the subject have led us to ask ourselves the question on our pillows, what would a wise, just and independent chancellor decree on the last question? Executory contracts are the peculiar objects of chancery jurisdiction and can be specifically enforced by chancery alone. Equity forms a part of our law, says the late Chief Justice, truly."

In 1813, **in Guardians of the Poor v. Greene, 5 Binn. 554,** TILGHMAN, C. J., said, on p. 558: [**Penna. Repts.**] "Every country has its common law. Ours is composed partly of the common law of England and partly of our own usuages. When our ancestors emigrated from England they took with them such of the English principles as were convenient for the situation in which they were about to place themselves. It required time and experience to ascertain how much of the English law would be suitable to this country. By degrees, as circumstances demanded, we adopted the English usages or substituted others better suited to our wants, until at length, *before the time of the Revolution*, we had formed a system of our own, founded in general on the English Constitution, but not without considerable variations."

Again in 1818, in **Jordan v. Cooper, 3 S. & R., 578, [Penna. Repts.]** the same learned judge said: "That quity is part of the law of Pennsylvania has never been doubted, and that the defendant may put in a plea founded upon equity only is equally clear."

In 1827, in **Witman v. Lex, 17 S. & R. 88, [Penna. Repts.]** at page 91. GIBSON, C. J., said: "At the common law of *England* these bequests could not be sustained, even where there is no uncertainty as to the person; if the bequest be on a trust not defined with reasonable certainty it will fail; for it is clear the testator did not intend that the trustee should have the beneficial interest. Such a bequest, however, would take effect under the **43 Eliz. Ch. 4**, and this has drawn the counsel to argue against the extension of that statute to this country, a point which must be conceded. But we consider the principles which chancery has adopted in the application of its principles to particular cases as obtaining here not, indeed, by force of the statute, but as part *of our own common law.*"

In 1844, in **Lehr v. Beaver, 8 W. & S., 102. [Penna. Repts.]** KENNEDY, J., said, on p. 106: "The circumstances of the case imposed upon him a moral obligation to do at least all he agreed to do and more, and were clearly sufficient to make this agreement binding on him upon mere principles of equity as they are distinguished in England from those of the common law. This being the case the agreement in Pennsylvania will be considered as binding at law, for equity has ever been regarded as part of the law in it."

In 1870, in **Church v. Ruland, 64 [Penna. Repts.] 432,** at p. 441, SHARSWOOD, J., said: "It cannot be maintained at this late day that the effect of investing the court with separate equity powers to be exercised according to the

mode of proceedings in use in the English Court of Chancery, was to divest them of any part of the jurisdiction before possessed by them to afford the same relief through common law forms. Equity is still as much a part of the law of Pennsylvania as it was in 1787."

And finally in 1893, in **Commonwealth v. Philadelphia, 153** [**Penna. Repts**] at p. 53, PAXSON, C. J., declared "equity is as much a part of the law of Pennsylvania as it was in 1787, when Chief Justice McKean so declared it to be in Pollard *v.* Shaffer."

It is, therefore, apparent that the common law administered in the federal courts is emphatically not that of Pennsylvania, which is an avowed blending of common law and equity; and many peculiar remedies may exist in Pennsylvania in form proceedings at common law, but in reality, from the federal point of view, methods of administering equity under common law forms and, as such, not maintainable in the Federal Courts. This brings us to the consideration of the question, what is the proceedings known in Pennsylvania as a writ of *scire facias* sur mortgage.

A mortgage at the common law of England was, as is well known, an estate upon condition, the condition being that upon payment of the debt at a fixed time the feoffor might re-enter, but upon breach the estate became absolute in the feoffee, (**Litt. Tenures, Lib. III, Ch. 5, Sec. 332; Co. Litt. 225 a,**) and the interposition of equity was required to soften the rigor of the condition and permit a redemption. In Pennsylvania, a mortgage is thus described by AGNEW, C. J., in **Tryon v. Munson, 77 Pa.**, at page **262**: " The mortgage passes to the mortgagee the title and right of possession to hold till payment shall be made. He may, therefore, enter at pleasure and take actual possession, use the land and reap its profits. Now this title or

lawful right to possess and actual *pedis possessio*, are not ideal or contemplative merely, but are real and tangible. True, the right is conditional, and will cease on payment of the debt, but until the condition is performed, the title and possession are as substantial and real as though they were absolute. The evidence of this is that the mortgagee may dispossess and hold out the mortgagor until he performs the conditions or until the perception of the profits reaches the same result. Thus we perceive an interest or estate in the land itself, capable of enjoyment and enabling the mortgagee to grasp and hold it actually, and not a mere lien or potentiality to follow it by legal process and condemn it for payment. The land passes to the mortgagee by the act of the party himself and needs no legal remedy to enforce the right. But a lien vests no estate, and is a mere incident of the debt to be enforced by a remedy at law, which may be limited. It is true, if the mortgagee be held out he may have to resort to ejectment, but this is to avoid a conflict and the statutory penalties for forcible entry, for otherwise he may take peaceable possession and is not liable as a trespasser."

This in effect accords with what is said by STRONG, J., in **Brobst v. Brock, 10 Wall.**, at p. **529**. "It is true that a mortgage is in substance but a security for a debt, or an obligation to which it is collateral. As between the mortgagor and all others than the mortgagee, it is a lien or security, and not an estate. But as between the parties to the instrument or their privies, it is a grant which operates to transmit the legal title to the mortgagee and leaves the mortgagor only a right to redeem. Formerly, if the condition was not strictly performed, the estate of the mortgagee at first conditional, became absolute; and the mortgagor's right to redeem was lost. The estate or interest, though defeasible at its inception, became unconditional on the failure of the mortgagor to pay the money secured or

fulfill the condition at the time appointed for performance. Pow. Mort. 9, 10, 2 Bl. Com. 158, Litt. 332. Courts of equity have in modern times relieved against such forfeiture, and in favor of a mortgagor have extended the time for redemption. But such courts, as fully as courts of law, have always regarded the legal title to be in the mortgagee until redemption and bills to redeem are entertained upon the principle that the mortgagee holds for the mortgagor when the debt secured by the mortgage has been paid or tendered. And such is the law of Pennsylvania. There, as elsewhere, the mortgagee upon breach of the condition may enter or maintain ejectment for the land. And having entered he cannot be dispossessed by the mortgagor so long as the mortgage continues in force."

Such being the nature of a mortgage, what are the recognized means of enforcing his rights, given to the mortgagee by common law and equity, as defined in that country from which our law is drawn and whose definition and distinction have been adopted by the United States courts in deciding cases to which, under it, their jurisdiction extends? They seem to be as follows: (1) entry and consequent possession, (2) a writ of ejectment, (3) foreclosure by bill in equity.

The first two are assertions of the mortgagee's *legal* rights as grantee of the estate and, when made made use of, leave him subject in equity on a bill by the mortgagor to redeem, to account for all rents and profits which he has made or received, or, but for his wilful default, would have made or received during his possession of the estate.

Smart v. Hunt, cited in note to Ode v. Heming, 1 Vern. 418.

Trulock v. Robey, 15 Sim. 265.

Adams' Equity, 117.

Story Eq. Jurisp. Sec. 1016 a.

Van Buren v. Olmstead, 5 Paige, Ch. 9.

Mitchell Real Est. in Penna., 203.

Reitenbaugh v. Ludwick, 31 Pa. 131.

Wells v. Vandyke, 109 Id. 330 336.

And during his possession he is liable ~~for accountability for property and liability~~ for waste.

Givins v. McCalmont, 4 Watts, 460.

The accountability for profits and liability for waste follow from the fact that in equity the mortgagee in ~~possession is regarded as in possession of~~ a trustee for the mortgagor, to apply the profits of the land, which he receives in money or in use, first to the payment of the interest and principal of the mortgage debt and afterwards to pay over the same to the mortgagor. In the language of Sir THOS. PLUMER, M. R., (**Cholmondeley v. Clinton, 2 Jac. & W., 179**) "the mortgagee in possession is the *bailiff*, without a salary, of the mortgagor."

The only way in which title can be acquired by such possession, whether obtained by entry or by writ of ejectment, is by its maintainance for so long a time that equity would refuse to interfere. This time has generally been held to be the same as would equal the time fixed by the Statute of Limitation to bar an ejectment. **In Cook v. Arnham, 3 P. Wms. 283.**—Lord TALBOT said (p. 287): "The length of time was not above fourteen years, which would not bar an ejectment, so neither could it bar a bill in equity." See also Lord HARDWICKE's decision in an

anonymous case, 3 **Atk.** 313, and in **Moore v. Cable,** 1 **John. Ch.** 385.—Chancellor KENT said, at p. 387: "Nothing short of actual possession for twenty years will, at law, toll the entry of the true owner and the equity of redemption, which in this court is the same as the fee at law, ought to be equally protected."

This being the state of the law, there remained, therefore, no way of getting rid of the right of redemption by any simple legal procedure or action; a right created by equity could only be destroyed by equity; for even the lapse of time acted only by reason of the equitable rule that as adverse possession for twenty years would bar an ejectment, so equity would, by analogy to the law, refuse to interfere in favor of one who had slept on his rights and neglected to assert them for more than twenty years. Even this rule was subject to the equitable qualification that a very slight act on the part of the mortgagee, acknowledging the mortgagor's title, would save his right to redeem.

Fairfax v. Montague, cited. 2 **Ves.** p. 84.

Campbell v. Beckford, cited. 4 id. 474.

Lake v. Thomas, 3 **Ves.** 17, 22.

Proctor v. Cowper, 2 **Vern.** 377.

Perry v. Marston, 2 **Bro. C.C.** 397.

As, therefore, it seemed unreasonable that a creditor should be compelled to wait indefinitely for the payment of his debt, which had been contracted with special reference to the land as a security and upon the faith of it, equity interposed on behalf of the creditor, and as it had prevented him from destroying the right of the debtor to his estate by

rigorous insistance upon a condition, and turned his former absolute estate into a security for a debt, so now it presented a way by which the equity which it had raised up could be prevented from unreasonably delaying the creditor, and, by the equitable procedure of a forelosure, gave the debtor a reasonable time within which to pay the debt, and, in default of such payment, declared the equity of redemption barred, and applied the estate or the proceeds of it, if a decree of sale were made, to the satisfaction of the plaintiff's claim. This, it is clear, was a purely equitable proceeding, and accomplished a purely equitable result. This is supported by authority. **Spence, Eq. Jur. 603:** "At length, in the reign of Charles I, it was established that in all cases of mortgages where the money was actually paid or tendered, though after the day, the mortgage should be considered as redeemed in equity, as it would have been at law on payment before the day; and from that time bills began to be filed by mortgagees for the extinction or foreclosure of this equity, unless payment were made by a certain day to be named."

This is quoted with approbation by SWAYNE, J., in **Clark v. Reyburn, 8 Wall. 318**, at p. 323.

See also **Bispham's Equity, Sec. 356.** "Equity having thus interposed so justly and so decidedly in favor of the mortgagor, was now ready to lend its assistance to the mortgagee, who in his turn might have been subjected to great inconveniences if the Court of Chancery had not come to his relief. Because, for a man to hold possession of an estate and yet to be all the time at the risk of being deprived of the enjoyment of it, at the option of the debtor, and whenever it might suit the convenience of the latter to pay the debt was, it is plain, to hold land by a very uncertain tenure. The mortgagee could not improve beyond the necessary repairs without being liable to have the improved property taken away from

him at any moment. It was, therefore, decided in equity that a bill would be entertained for the purpose of foreclosing (as it was termed) the mortgagor's equity of redemption. By the decree made under this bill a new day was fixed, on or before which the debtor was required to pay the debt, and if he failed to meet his obligation at the new date thus specified, his right to redeem was forever foreclosed and his estate absolutely forfeited to the mortgagee."

It is, therefore, clear that a proceeding to bar an equity of redemption is a purely equitable proceeding and consequently to accomplish that purpose the Federal Courts are bound to proceed according to the practice of the High Court of Chancery of England.

Boyle v. Zacharie, 6 Pet. 658.

Clark v. Reyburn, 8 Wall. 318.

Gorden v. Hoobart, 2 Sumn. 401.

This brings us to the question, what is the proceeding known in Pennsylvania as a *scire facias* sur mortgage? what are its objects; what its results in the State Courts, and what the means taken to accomplish that object?

The proceeding derives its authority from the latter sections of the Act of Assembly of 1705, entitled "An Act for the taking of lands in execution for the payment of debts."—*Bioren Laws, p. 57 et. seq.* (printed in full ante at p. 5.)

The earlier sections of the Act have no reference to proceedings upon mortgages. The Sixth Section is, however, a preamble to the portion which does refer to mortgages, and is as follows:

"VI. And, forasmuch as divers persons have mort-

gaged their lands and tenements in this Province, for securing the payment of monies, and some of them have died before the time of payment and left others to succeed them that have proved insolvent, and others have neglected to pay the mortgage money and so mortgages have become no effectual security, considering how low the annual profits of tenements and improved lands are here and the discouragements which the mortgagees meet with, by reason of the equity of redemption remaining on the mortgages; be it, therefore, enacted," etc.

It is manifest that the ill which the Act was intended to cure was the continued existence of the equity of redemption. There was no way at *law* of getting rid of the equity, and chancery proceedings were unknown. There was, therefore, distinctly proposed to be accomplished that which was in England accomplished by a bill in equity, and to destroy an equitable right. The Act then continues to describe the method by which the destruction of the equity should be accomplished: by the issue of a writ to be known as a *scire facias*, based not on a record but on a private paper, served on the mortgagor or his heirs, executors or administrators, by a judgment of the inquest thereon for the amount of the debt due and by a sale, if there should be bidders, and if not, by the delivery of the land to the mortgagee, and continues—"and when the said lands and hereditaments shall be so sold or delivered as aforesaid, the person or persons to whom they shall be so sold or delivered shall and may hold and enjoy the same with their appurtenances for such estate or estates as they were sold or delivered clearly discharged and freed from all equity and benefit of redemption and all other encumbrances made or suffered by the mortgagees, their heirs or assigns."

We have here the declaration of a complete foreclosure; the destruction of an equity which, under the English system which rules the federal courts, could be

brought about only by equity; and it is to be noted, the Act provides for the destruction not only of the right of redemption existing in the mortgagee but in others *e. g.* subsequent mortgagees who by the law of England would have a right to redeem, and that without making such other parties to the proceeding.

Now what is the character of the *scire facias* sur mortgage? If it bean action at law it cannot be maintained in the Circuit Court of the United States, because the Federal Courts haveno authority to use law forms in equity proceedings, or to accomplish equity under the guise of law, as they are courts of law and of equity and, in each capacity, are bound by the rules of the particular system which they, at the time, are engaged in administering. If it be a proceeding in equity, then it is one which is not recognized in the Federal Courts and cannot be employed by them as the practice solemnly adopted at the creation of those courts was the practice of the High Court of Chancery; and while the process at law in the several States has been recognized and adopted by the United States, such adoption does not extend to equity from which it is expressly excluded by the words of the Act of 1792 and of the **R. S. Sec. 914** themselves, and see also

Dravo v. Fabel, 132 U. S. 487 (1889).

Scott v. Armstrong, 146 id. 499 (1892).

Hall v. Yahoola River Mining Co., 1 Woods 544 (1873).

Blease v. Garlington, 92 U. S. 1 (1875).

Accordingly, we find the federal courts proceeding in the foreclosure of mortgages according to the ordinary practice by bill of equity even in States where special remedies have been provided by the State laws.

Tredway v. Sanger, 207 U. S. 323 (1882).

Pratt v. Northam, 5 Mason 95 (1828).

Willard v. Wood, 135 U. S. 309 (1890).

If the *scire facias* sur mortgage be a mixed proceeding, at law in so far as it provides for a jury and a sale upon a writ of *levari facias*, and equitable so far as it provides for a foreclosure of the equity of redemption and all other equities, then, under all the decisions, it is a proceeding which cannot be tolerated in the United States courts, who are enjoined by the very law of their being to keep distinct law and equity, both in principle and in remedy, and are forbidden by the same law to mingle them. An interesting case, recognizing this principle in a matter closely akin to the foreclosure of a mortgage, is the **American Freehold Loan and Mortgage Co. v. Thomas, 47 Fed. Rep. 550.** An action was brought on the law side of the United States Circuit Court for Georgia (N. E. D.) to enforce a lien created by Secs. 1969 and 1970 of the Code of Georgia, which were as follows :

Section 1969. "Whenever any person in this State conveys any real property by deed to secure any debt to any person loaning or advancing said vendor any money, or to secure any other debt, and shall take a bond for title back to said vendor, upon the payment of such debt or debts, or shall in like manner convey any personal property by bill of sale and take an obligation binding upon the person to whom said property was conveyed, to recovery of said property upon the payment of said debt or debts, such conveyance of real or personal property shall pass title of said property to the vendee, *provided*, that the consent of his wife has been first obtained, until the debt or debts which said conveyance was made to secure shall be fully paid and shall be held by the courts of this state to be an

absolute conveyance with the right reserved to the vendor to have said property reconveyed to him upon the payment of the debt or debts intended to be secured agreeably to the terms of the contract and not a mortgage."

Section 1970. "When any judgment shall be recorded in any of the Courts of this State upon a note or other evidence of debt, which said conveyance of realty was made and intended to secure, it shall and may be lawful for the vendee to make and file and have recorded in the Clerk's Office of the county wherein the land lies, a good and sufficent deed of conveyance to the defendant for said land; and if the said obligator be dead, then his executors or administrators may in like manner make and file such deed without obtaining an order of the Court for that purpose, whereupon the same may be levied on and sold under said judgment, as in other cases; *provided*, that the said judgment shall take lien upon the land prior to any other judgment or incumbrance against the defendant."

A judgment was obtained by default, and after execution and sales thereunder a motion was made to vacate the judgment and set aside the execution and sale. On the ground as stated by SPEER, J. "The cause was pending at law, and it is insisted by the movant that the judgment granted was tantamount to the foreclosure and enforcement of an equitable lien in the nature of a mortgage, to do which is not within the jurisdiction of a law court of the United States, but is the exercise of a power belonging to a Court of Equity." After an examination of the authorities, the Court was of opinion that it had proceeded without jurisdiction, and accordingly vacated the judgment and set aside the execution and sales.

In this connection it is well to bear in mind the following words of Mr. Justice MILLER: "Indeed the Supreme

Court have held, as they have been compelled to do, that when the federal courts come to administer the rights or the *remedies* claimed under what I may venture to term the improvements in the modes of procedure which have been adopted by the codes of the various states, in most of which equity and law have been consolidated, as well as under many new statutes giving new rights, appointing new modes of procedure and fixing new remedies, they must range those actions in those courts upon the equity or law side, as the nature of the *right asserted or the remedy given may require.* They do this as equity is understood in English courts at the time of the Revolution."—*Miller's Lectures on the Constitution, p. 318.*

Upon the views of the law above set forth it is respectfully submitted that the proceeding under the Pennsylvania Act of 1705, known as a *scire facias* sur mortgage, is a proceeding unknown to Federal practice and one by which the Circuit Court in the United States, sitting as a Court of Law, cannot take jurisdiction; and that consequently all the proceedings in this case in the Circuit Court of the United States for the Eastern District of Pennsylvania are without warrant of law and void, and that the judgment entered by said Court must be reversed.

FRANCIS TRACY TOBIN,
HENRY BUDD,
Counsel for plaintiff in error

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1895, No. 233.

MARY M. BLACK, ADMINISTRATRIX OF EDGAR N. BLACK, DECEASED, PLAINTIFF IN ERROR AND DEFENDANT BELOW

vs.

MARY K. L. BLACK, DEFENDANT IN ERROR AND PLAINTIFF BELOW.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Supplemental Brief for Plaintiff in Error.

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Counsel for Plaintiff in Error.

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SUPREME COURT OF THE
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October Term, 1895, No. 233.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

ARGUMENT.

The brief filed by the defendant in error has rendered advisable a short reply.

On page 5 of the brief of defendant in error is found the following: "Rules of Law of the United States District and Circuit Courts, adopted November 13, 1849,

"Rule 13

"MORTGAGES

"SEC. 29. To recover money upon any mortgage a writ of *scire facias* may be issued and served, and all other proceedings therein may be in form and manner as they

are in the courts of the State, if the plaintiff's counsel shall choose to proceed in that mode."

As printed, and especially as headed, the above would convey the impression that the rule set forth was part of a series of original rules promulgated in 1849, and an uncritical reading might lead to the impression that the promulgation had been by the Supreme Court from which it might be inferred that the question of the applicability of the proceeding by *scire facias* sur mortgage to the federal practice at law had been recognized by that Court. In point of fact the rule was adopted by the Circuit Court on the 23d of April, A. D. 1857—see Davis & Simpson's Court Rules, p. 369, (Philadelphia, 1870) and the manuscript rules preserved in the office of the Circuit Court at Philadelphia—and the rule no longer appears in the printed rules of the Circuit Court.

The question at issue is not, however, affected by the existence or non-existence of the rule, as what is to be determined is, had the Circuit Court any power to entertain the proceeding by *scire facias*? It is immaterial whether the learned judge claimed to have jurisdiction by proceeding in general accord with State practice, or by virtue of a rule made by himself or his predecessors.

The cases—**Railway Co. v. Whitton, 13 Wall. 270; Dennick v. R. R. Co., 103 U. S. 11, and Knight v. West Jersey R. R. Co., 108 Pa. St. Rept. 250**—cited by the defendant in error are not applicable to the present question. Each of the cases cited was one arising under an American equivalent of Lord Campbell's Act, giving a new and strictly *legal right*; a *right* which did not exist at common law prior to the passage of the statute, and which depended solely upon the statute, *i. e.*, the right to compensation for the loss involved in the death of a human being. It is not denied that where a right is created by a State

statute it may be enforced in a federal court, and that where the right is a purely legal one the federal court may follow the State practice in its enforcement.

But here the question is of a *remedy*, not of a *right*. The right to foreclose an equity existed before the Statute of 1705, and was a right in equity not a right at law. The Act of 1705 gave no new *right* but a new *remedy*, and allowed an equitable right to be enforced by action at law, without regard to the usual limitations of equity. The *scire facias* sur mortgage is a statutory proceeding whereby an equitable end, *i. e.*, the barring of an equity of redemption is to be accomplished, either by itself or in connection with the ascertainment and recovery of a debt. In the one case, the object sought is a purely equitable one, in the other it is of a mixed character. In either case, under all the authorities, it cannot be accomplished in a federal court by proceedings at law merely.

It is submitted that the argument of the defendant in error, if carried to its legitimate conclusion, would, wherever a remedy of any kind is given by State statute, convert the subject of that remedy into a legal right, unless expressly declared to be an equitable one, and so entirely destroy the constitutional distinction existing in federal jurisprudence; for if the allowance by statute of a certain proceeding be a right, as it rests upon positive enactment, it must be a *legal* one, hence, it must be permitted on the law side of the federal court, no matter what is sought to be accomplished by the proceeding, *e. g.*, suppose a statute were to enact that injunctions should be issued in accordance with the verdict of a jury in an action to be commenced by summons, the form of proceeding, on the above reasoning, would be entertainable in the federal courts sitting at law. It is manifest that a constitutional distinction cannot be so frittered away. It is to be noted that the Act of 1705 does not *abolish the equity of redemption;* it only provides for an

additional way of barring the equity, and in Pennsylvania the three remedies, by bill, by ejectment and by *scire facias*, now exist; the first equitable, the second legal, the third equitable or, perhaps, mixed, and therefore not cognizable in a federal court at law. The right to issue a *scire facias* is not a legal right in the juridical sense—as is a right of person or property—it is no more a *legal right* than the *right* to file a bill in equity; in other words, the Act of 1705 confers no *right* in the jurisprudential sense, but merely affords a remedy, and the remedy afforded must be judged of by the federal courts, as must any other remedy whether given by the common law or the statute of any State.

FRANCIS TRACY TOBIN,
HENRY BUDD,
Counsel for Plaintiff in Error.

APPENDIX.

COPY OF ~~SCIRE FACIAS.~~ Mortgage

This Indenture, made this nineteenth day of August, in the year of our Lord, one thousand eight hundred and eighty-seven.

Between Edgar N. Black, of Delaware County, Pennsylvania, of the first part; and Mary K. L Black, of the City of New York, in the State of New York, second part.

WHEREAS, the party of the first part was indebted to Charles N. Black, at the time of his death, in the sum of nine thousand dollars.

And Whereas, the said Charles N. Black had agreed to pay to divers persons, divers sums of money, all of which were borrowed for the said Edgar N. Black and were received by him and were secured to be paid as follows, viz.: by a Mortgage of Edgar N. Black and C. N. Black to R. C. McMurtrie, Trustee of the Estate of C. M. Bohlen, bearing date, May 30, 1877, recorded in Delaware County, in Mortgage Book U., No. 3, page 445, for ten thousand dollars, on which there was due and unpaid on the first day of June, 1886, three thousand three hundred and thirty-seven dollars and sixty-six cents for interest.

By a Mortgage to R. C. McMurtrie, *et. al.*, Trustee under the Will of John Bohlen, bearing date October 30, 1876,

recorded in Delaware County, in Mortgage Book S., No. 3, page 129, for ten thousand dollars, on which there was due for interest, on the thirtieth day of October, 1886, three thousand five hundred and sixty dollars and four cents.

A Note of E. N. Black, bearing date the fifth day of July, 1886, payable in six months, endorsed by C. N. Black with waiver of protest and of notice of dishonor, for four thousand, six hundred and seventy dollars and one cent.

Also a Note of E. N. Black for six thousand dollars dated the third day of December, 1878. A Note of E. N. Black for one thousand dollars, dated the twelfth day of December, 1878.

A Memorandum of Loan for five hundred dollars, dated the second day of January, 1879.

A Note of E. N. Black for six hundred and sixty-nine dollars bearing date the twenty-second day of March, 1879. All of which, at the request of E. N. Black, were secured by a pledge of Bank Stock belonging to Charles N. Black, and on which there is now due for principal, eight thousand one hundred and sixty-nine dollars and for interest to the first day of July, 1886, two thousand one hundred and sixty-four dollars and six cents, together with interest from the first day of July, 1886.

And Whereas, the said Edgar N. Black is desirous of securing to the persons entitled under the Will of the said Charles N. Black, the amounts due or which will become due to them if they should be called upon to pay the same.

And Whereas, the said Mary K. L. Black, the party of the second part, is an Executrix of the Will of Charles N. Black.

Now, this Indenture witnesseth, in consideration of the premises and of one dollar paid, the party of the first part has granted, bargained, sold, released and confirmed and by these presents does grant, bargain, sell, release and confirm unto the said Mary K. L. Black, her heirs and assigns, all the land, tenements and hereditaments of him, the said Edgar N. Black, situate in the Counties of Philadelphia and Delaware, in the State of Pennsylvania.

Together with all and singular, the buildings, ways, waters, water courses, rights, liberties, privileges, improvements, hereditaments and appurtenances, whatsoever thereunto belonging or in anywise appertaining and reversions, and remainders rents, issues and profits thereof.

To have and to hold the same unto the said Mary K. L. Black, her heirs and assigns, to and for the only proper use and behoof of the said Mary K. L. Black, her heirs and assigns forever.

Provided, if the said Edgar N. Black, his heirs, executors or administrators, shall pay to the said Mary K. L. Black, or to any person or persons entitled to the same, the sum of Nine Thousand Dollars, being the amount due and owing by him to the said Charles N. Black on the day of the date hereof, together with interest thereon from that day, at the rate of four per cent. per annum, within one year from the date of this Indenture, and shall pay to the person or persons entitled to the same, all moneys which may become due and owing to the representatives of the said Charles N. Black, by reason of any payments they may make, or which may be made out of the proceeds of his property, mortgaged or pledged, to secure the same within one year after the same becomes due and payable with interest, at the rate of six per cent. per annum, then this obligation and the estate hereby granted to be void, or else to remain in full force and virtue. And it is

further granted and agreed, that the debt due to the said Charles N. Black by the said Edgar N. Black, and the several debts which may become due and payable by him, to any person or persons claiming under the Will of Charles N. Black, upon the payment by them or out of any property they may be entitled to under his Will, shall be deemed and taken to constitute separate and distinct debts, in respect of which separate and distinct writs of *scire facias* may issue from time to time against separate and distinct parcels of the hereby mortgaged premises, and that such writs may issue at any time after default made on the payment of the particular and distinct debt hereby secured in the same manner as if there were separate and distinct mortgages for each of the said distinct debts and obligations upon each of the separate and distinct parcels of land hereby mortgaged.

In Witness Whereof, the said Edgar N. Black has hereunto set his hand and seal the day and year above written.

Sealed and delivered in the presence of us, the words and the estate hereby granted between the 31st and 32d lines, being first interlined in the 3d page hereof.

CHARLES N. BLACK,
JOHN RODGERS.

EDGAR N. BLACK [SEAL]

On the Nineteenth day of August, 1887, before me, the subscriber, a Notary Public, in and for the City of Philadelphia, personally came Edgar N. Black, and in due form

of law, acknowledged the above Indenture of Mortgage to be his act and deed, and desired the same might be recorded as such.

Witness my hand and seal,

JOHN RODGERS,
Notary Public.

[SEAL]

Recorded August 20th, 1887, 8 A. M.,

BLAINI,
Recorder.

DELAWARE COUNTY, *ss.*

I, John H. Kerlin, Recorder of Deeds in and for said County, do hereby certify that the within or aforgoing is a true and correct copy of a Mortgage from Edgar N. Black to Mary K. L. Black, so full and entire as the same remains on record in this office, in Mortgage Book T., No. 5, page 133, &c.

Witness my hand and seal of office this Fourth day of April, A. D. Eighteen Hundred and Ninety-two.

H. S. WALTER,
Deputy Recorder of Deed.

[SEAL]

The same mortgage is recorded in the office of Recorder of Deeds, for the City and County of Philadelphia, State of Pennsylvania.

Office Supreme Court U. S.
FILED.
APR 14 1896
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER SESSIONS, 1895. No. 233.

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vs.

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Defendant in Error and Plaintiff below.

In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

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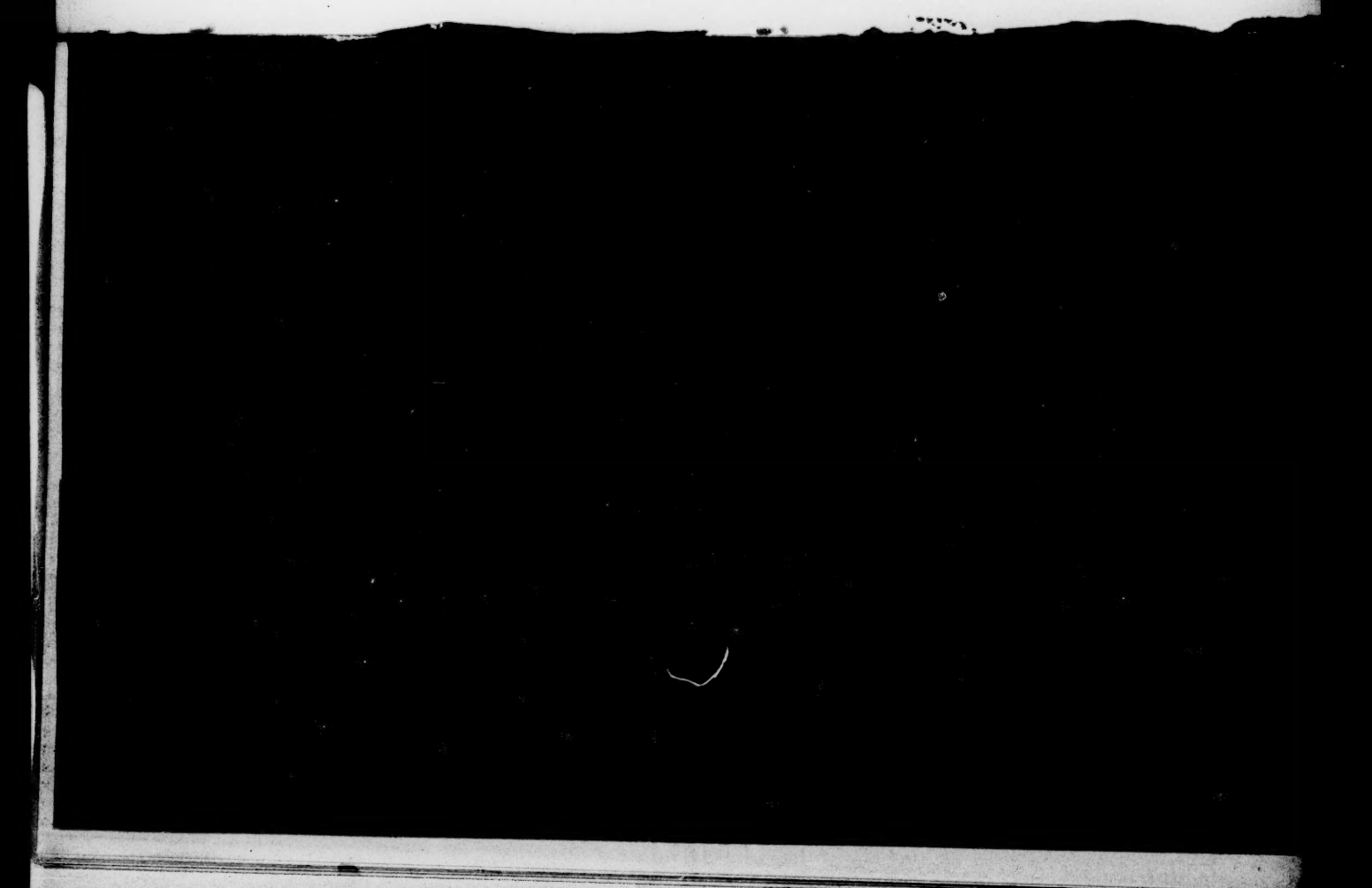
FRANCIS H. BOHLEN,
ARTHUR BIDDLE,
BIDDLE & WARD,
For the Defendant in Error.



In the Supreme Court of the United States.

MARY M. BLACK, Adm., etc.,	OCTOBER TERM, 1895.	
vs.	No. 233.	(Case, 15,314.)
MARY K. L. BLACK.	(E. D. of Pa. C. C. U. S.)	

COUNTER STATEMENT OF THE DEFENDANT IN ERROR.

This was an action of *scire facias sur mortgage*, brought under the provisions of the Pennsylvania Statute of 1705, by Mary K. L. Black, widow of Charles N. Black, of New York, the defendant in error, against Mary M. Black, administratrix of her deceased husband, Edgar N. Black, plaintiff in error, of Delaware County, which lies within the jurisdiction of the Circuit Court of the United States for the Eastern District of Pennsylvania. The mortgage was executed on August 19, 1887, by Edgar N. Black, to secure Mary K. L. Black, the executrix of his brother Charles, in respect of certain debts, and liabilities assumed for the mortgagor by his brother Charles. These debts and liabilities may be classified under three heads. The first was a liability to pay a mortgage of $10,000, executed on May 30, 1877, by Charles N. and Edgar N. Black, to Richard C. McMurtrie, of Philadelphia, Trustee of Catherine M. Bohlen, and another mortgage of $10,000, executed on October 30, 1876, by the same mortgagors, to Richard C. McMurtrie, Trustee, under the will of John Bohlen; both being executed at the request of Edgar N. Black for his own accommodation.

The second class consisted of a debt of Edgar N. Black of $9,000, admitted to be due to Charles at the execution of the

mortgages. And the third class was made up of a number of notes, secured by a pledge of bank stock belonging to Charles N. Black, as follows:

Note of Edgar N. Black, of December 3d, '76, in the amount of		$6,000.00
" " " December 12th, '76, " "		1,000.00
Memorandum Loan of January 2d, '72 " "		500.00
Note of Edgar N. Black, of March 22d, '79, " "		669.00
" " " July 5th, '86 (endorsed by Charles),		4,670.01

The verdict in the foreclosure suit was for the full amounts of these notes, and the contingent liability on the two mortgages was not included; the total sum of this verdict being $31,341.80, thus:

Debt admitted to be due		$ 9,000.00
Interest on it		2,509.50
Four notes	$8,169.00	
Interest on them	2,679.19	10,848.19
Interest		3,024.72
Note endorsed	4,670.01	
Interest	847.60	5,517.61
Interest on the mortgage debt to April 11th		437.72
Interest one day to April 12th, date of verdict		4.06
Total		$31,341.80

The *scire facias* averred that the mortgagee, as executrix of Charles N. Black, had paid the notes secured by the bank stock, and that default had been made by the mortgagor as to the debt of $9,000, and as to all the notes.

ARGUMENT ON BEHALF OF THE DEFENDANT IN ERROR.

There is but one proposition of law of any moment involved in the eleven assignments of error, and though the assignments do not apparently cover all the points raised in the Bill of Exceptions, as those omitted are of no importance, they will not be noticed.

First Point.

The principal point presented by this record is whether the power to entertain a foreclosure suit, instituted by virtue of

Section VI. of the Pennsylvania Statute of 1705, and commonly termed a *Scire Facias Sur Mortgage*, is within the jurisdiction of the Circuit Court of the United States for the Eastern District of Pennsylvania.

The first question to determine is whether the above statutory action is a legal or equitable remedy; and a glance at Section VI., of the Act of 1705, will at once disclose the legal character of the remedy there given.

It may, perhaps, be not amiss to premise our remarks upon this question by quoting the observations of the late Chief Justice Gibson, of the Supreme Court of Pennsylvania, upon the theory that is entertained with regard to a mortgage in that State. In Corporation for the Relief of Poor Distressed Presbyterian Ministers, etc., vs. Wallace, 3 Rawle (Pa.), on p. 127, that distinguished lawyer remarked:

"In form, a mortgage is certainly a conveyance; but it is unquestionably treated at law here, in the way it is treated in equity elsewhere, as a bare encumbrance, and accessory of a debt. As between the *parties* it is a conveyance, *so far as is necessary to enforce it as a security.* As regards third persons the mortgagor is the owner, even of the legal estate."

In other words, a mortgage is regarded in Pennsylvania as a mere pledge of realty to secure a debt.

Now, the Act of 1705 authorizes a mortgagee on a default, to sue out a writ of *Scire Facias*, which the clerk of the Court of the Common Pleas of the County, where the mortgaged lands lie, is required to make out and dispatch to the proper officer, requiring him to make known to the mortgagor, his heirs, etc., to appear before the Magistrates, Judges or Justices of the aforesaid Court, and show why the mortgaged premises should not be seized and sold for the payment of the debt claimed. The Act permits the defendant to appear and plead satisfaction, payment, or any other lawful plea in avoidance of the debt. The Act further provides for the entry of an ordinary judgment as is usual in actions at law, and execution is had by a writ of *levari facias.* In short, the proceedings are those which are had in an ordinary action of law, and can

the United States having jurisdiction of the subject-matter and the party. Here, A died in New Jersey, from injuries inflicted there for which, if death had not ensued, B, the party inflicting them, would have been liable to an action for damages. The statute of that State provided that such an action might be brought against the person inflicting the injuries by the personal representative of the deceased. An action was brought in the State of New York against B and removed to the Circuit Court of the United States, and it was held that the action could be maintained, as it was transitory, and as the right accrued upon the death in New Jersey. And the same rule has been laid down in the State of Pennsylvania.

Knight vs. West Jersey Railroad Company, 108 Pa. 250.

Nor can the objection prevail, that because the writ is to be sued forth from the Court of Common Pleas for the County where the lands lie, jurisdiction of this action cannot be maintained by the Circuit Court of the United States for the Eastern District of Pennsylvania. The foreclosed land lay within the jurisdiction of that Circuit, and the very point has been decided. In Railway Co. vs. Whitton, 13 Wallace, 271, a statute of Wisconsin provided, that "Whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case, the person who, or the corporation which, would have been liable, if the death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this State, and in some court established by the constitution and laws of the same." And it was held, that the proviso requiring the action to be brought in a court of the State would not prevent a non-resident plaintiff from removing from it, under the appropriate Act of Congress, to a Federal Court, and there maintaining it.

The remarks of Mr. Justice Field, on p. 285, are extremely

instructive: "It is undoubtedly true that the right of action exists only by virtue of the statute, and only in cases where the death was caused within the State. The liability of the party, whether a natural or an artificial person, extends only to cases where, from certain causes, death ensued within the limit of the statute. But when death does thus ensue from any of those causes, the relatives of the deceased named in the statute can maintain an action for damages. The liability within the conditions specified extends to all parties through whose wrongful acts, neglect or default, death ensued, and the right of action for damages occasioned thereby is possessed by all persons within the description designated. In all cases where a general right is thus conferred, it can be enforced in any Federal Court within the State having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such Federal Court by any provision of State legislation that it shall only be enforced in a State Court. The statutes of nearly every State provide for the institution of numerous suits, such as for partition, foreclosure, and the recovery of real property in particular courts, and in the Counties where the land is situated. Yet, it never has been pretended that limitations of this character could affect, in any respect, the jurisdiction of the Federal Court over such suits, where the citizenship of one of the parties was otherwise sufficient. Whenever a general rule as to property or personal rights, or injuries to either, is established by State legislation, its enforcement by a Federal Court in a case between the proper parties, is a matter of course, and the jurisdiction of the court in such case is not subject to State limitation."

It may not be inappropriate to cite a case from Pennsylvania, in which it appears that this action was entertained in the District Court of Philadelphia, a court of record, although the particular point under discussion was not raised. The case is *Thomas's Appeal*, 30 Pa. 378 (1858), decided about one hundred and fifty years after the passing of the Statute of 1705.

The Other Points.

The other assignments of error are scarcely worth discussing.

A. The Court below is said to have committed an error in hearing the case, or in permitting the sale to take place, because separate writs of *scire facias* had not been issued. (Assignments 3, 4.) The mortgage did not provide that separate and distinct writs of *scire facias* must issue. There was a provision that separate and distinct "writs of *scire facias* may issue, from time to time, against separate and distinct parcels of the mortgaged premises;" but this provision was purely for the benefit of the mortgagee, and there was no obligation to issue them separately. When the single writ in the case was issued, the whole debt was due. It is not necessary to discuss this point further.

B. Nor is it necessary to discuss the point as to whether the Court erred, or did not err, in accepting the security offered by the plaintiff in error, to constitute a supersedeas. The opinion is given in full in the record (p. 82); and it is hardly the province of a Court of Error to pass upon such a point.

C. The sixth assignment of error it is not necessary to discuss. Nor are the assignments as to advertising, posting, etc. (7, 8, 10). The record shows—as far as it shows anything—that everything was done which ought to have been done.

D. The ninth assignment is not understood, and therefore cannot be replied to. The eleventh assignment is not clearly understood. It is stated in such a way as to be susceptible of several meanings; and as, in the opinion of the counsel for the defendant in error, it has no particular application to any evidence disclosed in the record, it will not be considered.

FRANCIS H. BOHLEN,
ARTHUR BIDDLE,
BIDDLE & WARD,
For the Defendant in Error and Plaintiff below.

APPENDIX A.

Act of 1705.

VI. And forasmuch as divers persons have mortgaged their lands and tenements in this province, for securing the payment of monies, and some of them have died before the time of payment, and left others to succeed them, that have proved insolvent, and others have neglected to pay the mortgage-money, and so mortgages have become no effectual security, considering how low the annual profits of tenements and improved lands are here, and the discouragements which the mortgagees meet with, by reason of the equity of redemption remaining in the mortgagers: Be it therefore enacted, That where default or defaults have been or shall be made or suffered, by any mortgager or mortgagers of any lands, tenements, or other hereditaments, within this province, or by his, her or their heirs, executors, administrators and assigns, of or in payment of the mortgage-money, or performance of the condition or conditions, which they, or any of them, should have paid or performed, or ought to pay or perform in such manner and form, and according to the purport, tenor and effect, of the respective provisos, conditions or covenants, comprised in their deeds of mortgage or defeazance, and at the days, times and places, in the same deeds respectively mentioned and contained; that in every such case, it shall and may be lawful to and for the mortgagee or mortgagees, and him, her or them, that grant the said deeds of defeazance, and his, her and their heirs, executors, administrators or assigns, at any time after the expiration of twelve months, next ensuing the last day whereon the said mortgage-money ought to be paid, or other conditions performed as aforesaid, to sue forth a writ or writs of *scire facias*, which the Clerk of the Court of Common Pleas for the county or city where the said mortgaged lands or hereditaments lie, (and he) is hereby impowered and required to make out and dispatch, directed to the proper

officer, requiring him, by honest and lawful men of the neighbourhood, to make known to the mortgager or mortgagers, his, her or their heirs, executors or administrators, that he or they be and appear before the Magistrates, Judges or Justices of the said court or courts, to show, if anything he or they have to say, wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage-money, with interest, or to satisfy the damages which the plaintiff in such *scire facias* shall, upon the record, suggest, for the breach of non-performance of the said conditions. And if the defendant in such *scire facias* appears, he or she may plead satisfaction or payment of part or all the mortgage-money, or any other lawful plea, in avoidance of the deed or debt, as the case may require: But if the defendants in such *scire facias* will not appear on the day whereon the same writ shall be made returnable, then, if the case be such as damages only are to be recovered, an inquest shall be forthwith charged to inquire thereof, and the definite judgment therein, as well as all other Judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in the *scire facias* shall have execution by *levari facias*, directed to the proper officer; by virtue whereof the said mortgaged premises shall be taken in execution, and exposed to sale in manner aforesaid; and, upon sale, conveyed to the buyer or buyers thereof, and the money or price of the same rendered to the mortgagee or creditor; but for want of buyers, (and) to be delivered to the mortgagee or creditor, in manner and form as is herein above directed concerning other lands and hereditaments, to be sold or delivered upon executions for other debts or damages; and when the said lands and hereditaments shall be so sold or delivered as aforesaid, the person or persons to whom they shall be so sold or delivered, shall and may hold and enjoy the same, with their appurtenances, for such estate or estates as they were sold or delivered, clearly discharged and freed from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagers, their heirs or assigns; and such sales shall be

available in law, and the respective vendees, mortgagees or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid ; but before such sales be made, notice shall be given, in writing, in manner and form as is herein above directed concerning the sale of lands upon execution, any law or usage to the contrary notwithstanding.

Office Supreme Court U. S.
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APR 25 1896
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vs.	No. 233. (Case 15,314.)
MARY K. L. BLACK.	(E. D. of Pa. C. C. U. S.)

Supplemental Brief on the Part of the Defendant in Error.

The following authorities are respectfully submitted to the Court, for their consideration, in accordance with the suggestion of the Chief Justice, in the above case. They had escaped the attention of the counsel for the defendant in error, until the latter part of last week, when it was too late to have them printed in time for the argument.

The action of the *Scire Facias sur Mortgage* in Pennsylvania was suggested by the remedy by *Scire Facias* in England. In Spencer *vs.* Haynes, 12 Phila. (Pa.) 454, A. D. 1877, THAYER, P. J., remarked: "The obvious analogies arising out of the remedy by *Scire Facias* in real actions at common law, and in personal actions by the Statute of Westminster 2d, Chap. 45, doubtless suggested the proceeding at law provided by the Act of 1705, for suing out mortgages, as a substitute for the more expensive and dilatory method of proceeding in England by a Bill of Foreclosure, a substitution which furnished a very ingenious argument to Mr. Lewis, in the case of Dorrow *vs.* Kelly, 1 Dallas, 142, in contending that inasmuch as this was a substitute for a Chancery remedy, it ought to be governed by equitable principles, a position which the Court, however, distinctly repudiated."

For over a hundred years the action on the *Scire Facias sur Mortgage* has been ruled in Pennsylvania to be a proceeding at law, and we believe that since the decision in Dorrow *vs.* Kelly, *supra*, that question has never been doubted in Pennsylvania.

Dorrow *vs.* Kelly, 1 Dallas, 142 [A. D. 1785], came before the Court towards the end of the last century, on a rule to show cause, why the proceedings on the *Scire Facias* on an assigned mortgage, should not be stayed, on payment of the principal and interest due on the mortgage? The contention on the part of the plaintiff being, that a subsequent debt having been contracted with the assignee of the mortgage, the rule should not be granted till such subsequent debt be first paid, in accordance with the theory that the action on the *Scire Facias* was in the nature of an equitable remedy, and should be treated in accordance with the principles of equity by the Court, and that therefore the proceedings on the *Scire Facias* should not be stayed until the other debt was paid. It was contended by Mr. Ingersoll, on behalf of the rule, that the proceedings in Pennsylvania on the *Scire Facias* in Pennsylvania were quite different from the foreclosure proceedings in England. That in Pennsylvania there is no such thing as foreclosure; that the mortgaged land never ceases to be a pledge; that the mortgagee can never become the owner of the land unless he purchases under execution. That in England relief is given to the mortgagor in Chancery, because he is remediless at law, and therefore the English Court will grant the equity upon what terms they please. But in Pennsylvania the Act of Assembly precludes all necessity for such an interference; that the privilege of redemption after the day of payment passed is not, strictly speaking, in equity, and therefore the principle of the Chancery cannot exist.

The opinion was given by SHIPPEN, J., President of the Court of Common Pleas, and subsequently Chief Justice of Pennsylvania. On p. 144 he said: "Being a Court of law, we cannot take upon ourselves to act as a Court of Chancery; we have no power to foreclose the equity of redemption, or to

impose terms upon a mortgagor applying to redeem. The Courts of law in England have never done it, but under the Act of Parliament, 7 G. 2 c. 20, made for the more easy redemption and foreclosure of mortgages. Under this Act, when an ejectment is brought for the recovery of lands mortgaged, if the mortgagor shall become defendant in the ejectment, and shall at any time pending the action pay the principal and interest money due on the mortgage, or bring it into Court, such money shall be taken in full discharge and satisfaction of the mortgage, and the Court shall discharge the mortgagor and compel the mortgagee to surrender and reconvey the mortgaged premises. . . . The Courts of law in this State have in some instances adopted the Chancery rules, to prevent the absolute failure of justice. But in this case there is no necessity to usurp the powers of the Court of Chancery. We have a positive Act of Assembly, directing the mode of proceeding upon mortgages, entirely different from the modes prescribed in England. This Act expressly confines the remedy of the mortgagee to the recovery of the principal and interest due on the mortgage, and the proceedings under the law show the uniform construction of it. The *Scire Facias* is to show cause why the land should not be sold for the payment of the principal and interest due on the mortgage: when judgment is obtained the *Levari Facias* is to levy the principal and interest money only." And the rule was made absolute, all principles of equity being excluded from the case.

In Spencer *vs.* Haynes, 12 Phila. (Pa.) 452 [A. D. 1877], the principle was reiterated that the action on the *Scire Facias* was an action at law.

In "Jones on Mortgages," Vol. II. p. 366 (3d ed.) it is also stated, by that well-known author, that the Pennsylvania proceeding in the action of *Scire Facias* is an action at law.

In Pennsylvania, the Supreme Court has always repudiated the notion that a Court in Pennsylvania has any jurisdiction in equity to decree a sale of mortgaged premises; there being already sufficient remedy given at law under the Act of 1705.

In Ashhurst *vs.* Montour Iron Co., 35 Pa. 30, it was decided by the Supreme Court of Pennsylvania, that Courts of Equity have no jurisdiction in Pennsylvania to decree a sale of mortgaged premises, at the instance of the mortgagee, although the mortgagor may be a corporation, and the mortgage given In Trust to secure its bonds. On p. 39 WOODWARD, J., remarked:

"Under none of the constitutions of Pennsylvania, and under no Act of Assembly prior to 1836, is it pretended that the Courts possess any such power. The remedies upon mortgages before that date were twofold. First, the common law remedy of entry or ejectment to the mortgagee, whereby he gained the possession and took the profits of the estate, subject, however, to the equity of redemption in the mortgagor; and secondly, the *Scire Facias* given by the old Provincial Act of 1705, whereby the equity of redemption could be foreclosed, and the estate brought to sale, at any time after the year had elapsed from default in making the last payment secured by the mortgage. When the revisors prepared the Act of 1836, enlarging the equity powers of the courts, they took no notice of the chancery jurisdiction in England over mortgages, and of the remedies existing in Pennsylvania, and they said, 'We find no defects in our law upon this point, and have no occasion to borrow any of the powers of the chancery.'"

In Bradley *vs.* Chester Valley R. R. Co., 36 Pa. 141, it was again reiterated that the Courts of Equity in Pennsylvania possess no jurisdiction over mortgages.

The only chancery jurisdiction that Pennsylvania Courts have, was given by the Act of April 11th, 1862, in which the Supreme Court is given chancery powers with regard to the mortgages of corporations.

See McElrath *vs.* Pittsburgh & Steubenville R. R. Co., 55 Pa. 189. And this Act was passed in order that a Court of Chancery might give a remedy more adequate for the administration of the large mortgages which corporations are in the habit of making, as is observed by Mr. Jones, in his book on Mortgages, Vol. II., p. 364 (3rd ed.).

It must also be borne in mind that the action on the *Scire Facias* does not bar the equity of redemption. That was decided in Dorrow *vs.* Kelly, *supra*. The statute destroys it, and the action is merely to have the land sold.

There is no need to cite any authorities in reply to the brief of the plaintiff in error, as none cited by him are in point. It may be, however, remarked that the phrase which he makes use of in his brief, that "Equity is part of the common law of Pennsylvania," must be understood in a restricted sense. For example, as it was stated by SHIPPEN, J., in Dorrow *vs.* Kelly, *supra*, "The Courts of Law in this State have, in some instances, adopted the chancery rules, to prevent the absolute failure of justice." Or, as it was stated by WOODWARD, J., in Bradley *vs.* Chester Valley R. R. Co., 36 Pa. 141, "Certain equity powers have been exercised under the common law which prevail in our Courts, and certain other specific equity powers were long since conferred by the constitution, the Orphans' Court Statutes, and other legislation, to be exercised by common law judges, but in the form of equity proceedings. In 1836 more of this class of powers were conferred, and subsequent grants have enlarged them, until we have come to possess nearly all the jurisdiction which Courts of Chancery exercise under the principal heads of equity. These grants did not, however, embrace the subject of mortgages."

In other words, while Courts of Law may exercise certain jurisdiction in equity, in certain cases, for a certain specific purpose, proceedings in equity and law are just as distinct in Pennsylvania as in Great Britain; and a Bill in Equity is demurrable where there is an adequate remedy at law; and equitable procedure is just as well recognized in Pennsylvania as legal procedure.

The above is respectfully submitted.

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